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- (i) The name and address of the distributor, retailer, or reseller;
- (ii) The name and address of the purchaser or recipient of the phosphogypsum;
- (iii) The quantity (in pounds) of phosphogypsum resold or transferred;
- (iv) The date of resale or transfer;
- (v) A description of the intended end-use for the phosphogypsum;
- (vi) A copy of each certification document which accompanied the phosphogypsum at the time it was purchased or received by the distributor, retailer, or reseller; and
- (vii) The signature of the person who prepared the certification.

(2) The distributor, retailer, or reseller shall retain the certification document for five years from the date of resale or transfer, and shall produce the document for inspection upon request by the Administrator, or his authorized representative. For every resale or transfer of phosphogypsum to a person other than an agricultural end-user, the distributor, retailer, or reseller shall also provide a copy of the certification document to the purchaser or transferee.

[57 FR 23317, June 3, 1992, as amended at 65 FR 62158, Oct. 17, 2000]

§ 61.209 Required records.

(a) Each owner or operator of a phosphogypsum stack must maintain records for each stack documenting the procedure used to verify compliance with the flux standard in § 61.202, including all measurements, calculations, and analytical methods on which input parameters were based. The required documentation shall be sufficient to allow an independent auditor to verify the correctness of the determination made concerning compliance of the stack with flux standard.

(b) Each owner or operator of a phosphogypsum stack must maintain records documenting the procedure used to determine average radium-226 concentration pursuant to § 61.207, including all measurements, calculations, and analytical methods on which input parameters were based. The required documentation shall be sufficient to allow an independent auditor to verify the accuracy of the radium-226 concentration.

(c) Each facility which uses phosphogypsum pursuant to § 61.205 or § 61.206 shall prepare records which include the following information:

(1) The name and address of the person in charge of the activity involving use of phosphogypsum.

(2) A description of each use of phosphogypsum, including the handling and processing that the phosphogypsum underwent.

(3) The location of each site where each use of phosphogypsum occurred, including the suite and/or building number, street, city, county, state, and zip code.

(4) The mailing address of each facility using phosphogypsum, if different from paragraph (c)(3) of this section.

(5) The date of each use of phosphogypsum.

(6) The quantity of phosphogypsum used.

(7) The certified average concentration of radium-226 for the phosphogypsum which was used.

(8) A description of all measures taken to prevent the uncontrolled release of phosphogypsum into the environment.

(9) A description of the disposition of any unused phosphogypsum.

(d) These records shall be retained by the facility for at least five years from the date of use of the phosphogypsum and shall be produced for inspection upon request by the Administrator, or his authorized representative.

§ 61.210 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart S [Reserved]

Subpart T—National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings

SOURCE: 54 FR 51702, Dec. 15, 1989, unless otherwise noted.

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§ 61.220 Designation of facilities.

(a) The provisions of this subpart apply to owners and operators of all sites that are used for the disposal of tailings, and that managed residual radioactive material during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings, that are listed in, or designated by the Secretary of Energy under title I of the Uranium Mill Tailings Radiation Control Act of 1978, except § 61.226 of this subpart which applies to owners and operators of all sites that are regulated under title II of the Uranium Mill Tailings Radiation Control Act of 1978.

(b) [Reserved]

[59 FR 36301, July 15, 1994]

§ 61.221 Definitions.

As used in this subpart, all terms not defined here have the meanings given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Long term stabilization* means the addition of material on a uranium mill tailings pile for the purpose of ensuring compliance with the requirements of 40 CFR 192.02(a). These actions shall be considered complete when the Nuclear Regulatory Commission determines that the requirements of 40 CFR 192.02(a) have been met.

(b) *Operational* means a uranium mill tailings pile that is licensed to accept additional tailings, and those tailings can be added without violating subpart W or any other Federal, state or local rule or law. A pile cannot be considered operational if it is filled to capacity or the mill it accepts tailings from has been dismantled or otherwise decommissioned.

(c) *Residual radioactive materials* shall have the same meaning as in section 101(7) of the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7911(7).

(d) *Tailings* shall have the same meaning as in section 101(8) of the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7911(8).

(e) *In significant part* means in a manner that is not reasonably expected to materially (i.e., more than de minimis) interfere with compliance with the 20

pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee).

[54 FR 51702, Dec. 15, 1989, as amended at 59 FR 36301, July 15, 1994]

§ 61.222 Standard.

(a) Radon-222 emissions to the ambient air from uranium mill tailings pile that are no longer operational shall not exceed 20 pCi/(m²-sec) (1.9 pCi/(ft²-sec)) of radon-222.

(b) Once a uranium mill tailings pile or impoundment ceases to be operational it must be disposed of and brought into compliance with this standard within two years of the effective date of the standard. If it is not physically possible for an owner or operator to complete disposal within that time, EPA shall, after consultation with the owner or operator, establish a compliance agreement which will assure that disposal will be completed as quickly as possible.

[54 FR 51702, Dec. 15, 1989, as amended at 59 FR 36301, July 15, 1994; 65 FR 62158, Oct. 17, 2000]

§ 61.223 Compliance procedures.

(a) Sixty days following the completion of covering the pile to limit radon emissions but prior to the long term stabilization of the pile, the owners or operators of uranium mill tailings shall conduct testing for all piles within the facility in accordance with the procedures described in 40 CFR part 61, appendix B, Method 115, or other procedures for which EPA has granted prior approval.

(b) Ninety days after the testing is required, each facility shall provide EPA with a report detailing the actions taken and the results of the radon-222 flux testing. EPA shall be notified at least 30 days prior to an emission test so that EPA may, at its option, observe the test. If meteorological conditions are such that a test cannot be properly conducted, then the owner or operator shall notify EPA and test as soon as conditions permit. Each report shall also include the following information:

(1) The name and location of the facility.

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- (2) A list of the piles at the facility.
- (3) A description of the control measures taken to decrease the radon flux from the source and any actions taken to insure the long term effectiveness of the control measures.
- (4) The results of the testing conducted, including the results of each measurement.
- (5) Each report shall be signed and dated by a public official in charge of the facility and contain the following declaration immediately above the signature line:

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See 18 U.S.C. 1001.

- (c) If year long measurements are made in accordance with Method 115 of appendix B of part 61, this report shall include the results of the first measurement period and provide a schedule for the measurement frequency to be used. An additional report shall be submitted ninety days after completion of the final measurements.
- (d) If long term stabilization has begun before the effective date of the rule then testing may be conducted at any time, up to 60 days after the long term stabilization is completed.
- (e) If the testing demonstrates that the pile meets the requirement of § 61.222(a) and long term stabilization has been completed then the pile is considered disposed for purposes of this rule.

[54 FR 51702, Dec. 15, 1989, as amended at 59 FR 36302, July 15, 1994]

§ 61.224 Recordkeeping requirements.

The owner or operator must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. This documentation should be sufficient to allow an independent auditor

to verify the accuracy of the determination made concerning the facility's compliance with the standard. The Administrator shall be kept apprised of the location of these records and the records must be kept for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

§ 61.225 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

§ 61.226 Reconsideration of rescission and reinstatement of this subpart.

(a) *Reinstatement of this subpart upon completion of reconsideration of rescission.* (1) The Administrator shall reinstate 40 CFR part 61, subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has:

(i) Failed on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) (i.e., contained in the license) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard; and

(ii) Those failures may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m²-s flux standard at the uranium mill tailings disposal site.

(2) The Administrator shall reinstate 40 CFR part 61, subpart T on a site-specific basis as applied to owners and operators of non-operational uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State if the Administrator determines by rulemaking, based on the record:

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(i) That NRC or an affected Agreement State has failed in significant part on a site-specific basis to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States; and

(ii) Those failures may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m²-s flux standard at the uranium mill tailings disposal site.

(3) Upon completion of the reconsideration of rescission pursuant to § 61.226(c) the Administrator may issue a finding that reinstatement of this subpart is not appropriate if the Administrator finds:

(i) NRC and the affected Agreement States are on a programmatic basis implementing and enforcing, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) (i.e., contained in the license) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard; or

(ii) NRC or an affected Agreement State are on a site-specific basis, in significant part, achieving compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States.

(b) *Procedures to petition for reconsideration of rescission of this subpart.* (1) A person may petition the Administrator to reconsider the rescission and seek reinstatement of this subpart under § 61.226(a).

(2) EPA shall summarily dismiss a petition to reconsider rescission and seek reinstatement of this subpart under § 61.226(a)(1) (programmatic basis), without prejudice, unless the petitioner demonstrates that written notice of the alleged failure(s) was provided to NRC at least 60 days before filing the petition with EPA. This notification shall include a statement of the grounds for such a petition and this no-

tice requirement may be satisfied by, but is not limited to, submissions or pleadings submitted to NRC during a proceeding conducted by NRC.

(3) EPA shall summarily dismiss a petition to reconsider rescission and seek reinstatement of this subpart under § 61.226(a)(2) (site-specific basis), without prejudice, unless the petitioner demonstrates that a written request was made to NRC or an affected Agreement State for enforcement or other relief at least 60 days before filing its petition with EPA, and unless the petitioner alleges that NRC or the affected Agreement State failed to respond to such request by taking action, as necessary, to assure timely implementation and enforcement of the 20 pCi/m²-s flux standard.

(4) Upon receipt of a petition under § 61.226(b)(1) that is not dismissed under § 61.226(b)(2) or (b)(3), EPA will propose to grant or deny an authorized petition to reconsider, take comments on the Agency's proposed action, and take final action granting or denying such petition to reconsider within 300 days of receipt.

(c) *Reconsideration of rescission of this subpart initiated by the Administrator.* (1) The Administrator may initiate reconsideration of the rescission and reinstatement of this subpart as applied to owners and operators of non-operational uranium mill tailings disposal sites if EPA has reason to believe that NRC or an affected Agreement State has failed to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard.

(2) Before the Administrator initiates reconsideration of the rescission and reinstatement of this subpart under § 61.226(c)(1), EPA shall consult with NRC to address EPA's concerns and if the consultation does not resolve the concerns, EPA shall provide NRC with 60 days notice of the Agency's intent to initiate rulemaking to reinstate this subpart.

[59 FR 36302, July 15, 1994]