

June 16, 2000

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Chairman Richard A. Meserve  
 Commissioner Greta J. Dicus  
 Commissioner Nils J. Diaz  
 Commissioner Edward McGaffigan, Jr.  
 Commissioner Jeffrey S. Merrifield

Re: PRM-90-63, -63A

DOCKET NUMBER  
 PROPOSED RULE **PR 50**  
 (64FR31737)

Dear Chairman Meserve and Commissioners:

The Commission still has yet to act on the rulemaking petition that I filed in 1995 on the subject of potassium iodide (KI). I would like to ask the Commission to make a decision, one way or the other.

My petition asked for a change of a few words in one Commission regulation. Rulemaking does not need to take 5 years. It does not even have to take *one* year. When I was a Government lawyer, handling a rulemaking vastly more complex than the present one, with 38,000 comments, the entire process took 9 months. Moreover, in the case of KI, the analyses had already been performed during the 5 years (1989-1994) that my differing professional opinion, ultimately never resolved, was pending. This rulemaking should therefore have been exceptionally quick, rather than the opposite. After 11 years of waiting, I think the Commission owes the public and me a decision, favorable or unfavorable. This is an issue of fundamental procedural fairness, wholly separate from the merits of the KI issue.

It has been suggested to me that the opponents of KI stockpiling and funding are playing the role of Scheherazade: determined to make the story-telling continue forever, so that the day of decision never comes. Why might the opponents of the petition wish to postpone a resolution indefinitely? Perhaps because at this point they cannot afford either to win or to lose. They do not want a defeat, obviously enough, but a victory might present an even greater danger.<sup>1</sup> It would mean, for one thing, the certainty of a lawsuit in which the entire story would be presented in black and white to the Court of Appeals for the D.C. Circuit. (If the Commission wants an honest opinion of how a reviewing court is likely to regard the NRC's handling of the KI issue, it should ask its distinguished Solicitor.) Moreover, *any* decision, coming after so many years, might be the newsworthy event that triggers the media's renewed attention to the KI issue.

And so for years, I keep reading about one or another promising solution, just over the horizon, that will make the whole problem go away, if only everyone waits just a bit longer. Take, for example, the idea of regional stockpiles under FEMA's aegis in lieu of stockpiles close to reactors, where they might do some good in an actual emergency. If anyone at NRC had thought to check with Director Witt at FEMA before publicly endorsing this idea, it would have been clear that it was a non-starter. But when Director Witt responded, in April 1999, that regional stockpiles would do more harm than good, and that FEMA would have nothing to do with this plan, why did the NRC not drop the idea? There can be no surer way to chew up time fruitlessly than to try to persuade an agency to buy a proposal that its Director has repeatedly and emphatically rejected. If the objective were to resolve the KI issue, the NRC's refusal to take no for an answer from Director Witt would be inexplicable; but if the real objective is delay itself, then this approach makes perfect sense, for it creates the appearance of activity without any risk of forward motion.

"Justice delayed is justice denied" is an axiom no less valid for being well-worn. One need not be

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<sup>1</sup> For opponents of the petition, the ideal solution would probably be that of 1994, when the Commissioners tied 2-2 on the DPO, thereby preserving the status quo without a written decision.

a partisan on either side of the KI issue to discern a "good government" issue here. How much longer is it reasonable to ask me to wait for an up-or-down decision? Even more to the point, how much longer than 11 years is it reasonable to ask the American people -- for whom you work -- to wait for you to decide an issue that affects the health and safety of their children?

Sincerely,  
Peter Crane

cc: Director James Lee Witt, FEMA

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