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FINAL REPLY:

Western Governors

Governor Janet Napolitano, Arizona
Governor Arnold Schwarzenegger, California
Governor Kenny C. Guinn, Nevada
Governor Bill Richardson, New Mexico
Governor Ted Kulongoski, Oregon
Governor Olene S. Walker, Utah
Governor Gary Locke, Washington
Governor Dave Freudenthal, Wyoming

TO:

Chairman Diaz

FOR SIGNATURE OF :

** PRI **

CRC NO: 04-0150

Chairman Diaz

DESC:

Packaging and Transportation of Radioactive
Material - Amendments to 10 CFR 71

ROUTING:

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Mallett, RIV

DATE: 03/17/04

ASSIGNED TO:

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SPECIAL INSTRUCTIONS OR REMARKS:

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OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

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ACTION OFFICE: EDO

AUTHOR: Arnold Schwarzenegger
AFFILIATION: CA-GOV
ADDRESSEE: Nils Diaz
SUBJECT: Amendments to 10 CFR 71, Packaging and Transportation of Radioactive Material

ACTION: Signature of Chairman
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EDO --G20040181

4558

CHAIRMAN REC'D

March 11, 2004

04 MAR 12 PM 3:17

Janet Napolitano
State of Arizona

Nils J. Diaz, Chairman
United States Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

Arnold Schwarzenegger
State of California

Subject: Amendment to 10 CFR71, Packaging and Transportation of
Radioactive Material.

Kenny Gulnn
State of Nevada

Dear Chairman Diaz:

Bill Richardson
State of New Mexico

As Governors of western states who have strongly stood by the safety of the U. S. Department of Energy's (DOE) shipping campaign to the Waste Isolation Pilot Plant (WIPP), we believe we have a large stake in the regulations affecting that campaign. Our support of the WIPP shipping campaign has been based in part upon the double containment packaging standard for plutonium shipments, as stated in our letter to the NRC dated July 29, 2002. We believe that the NRC has not adequately addressed our objections, as stated in our letter, to the proposed rule change including concerns related to terrorism, public confidence in shipments and the need for NRC to provide compelling scientific and technical analyses to justify any proposal to relax these plutonium packaging standards. In addition, the NRC failed to consider important technical comments submitted on the proposed rule. For these reasons, we believe the position the NRC has reached on the double containment packaging standards is erroneous and should be reconsidered. Our rationale for requesting that the NRC consider its position is discussed more fully below.

Olene Walker
State of Utah

Gary Locke
State of Washington

Public confidence in TRUPACT-II shipments is largely based upon, among other factors, the double containment feature of these packages. This confidence is more than merely "perception." Both NRC and DOE acknowledge there would be less likelihood of a radionuclide release from a double contained package.

Dave Freudenthal
State of Wyoming

Further, since the September 11, 2001 attacks on our country, there is significantly greater national concern about the protection of radioactive materials. In response to this concern, the NRC itself has taken a number of initiatives in other areas to increase security and safety. Yet there is no indication in the responses to comments contained in the NRC August 15, 2003 Rulemaking Affirmation that NRC has conducted any post 9/11 risk analyses or seriously considered the possibility that a single contained package would be less secure in a terrorist attack.

Nils J. Diaz, Chairman
March 11, 2004
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The decision for the NRC rule change concerning the double containment of plutonium appears to be heavily based upon economic issues, undue regulatory burden, increased radiation doses to waste handlers, and that double containment "is not risk informed or performance based." Yet there is no indication that NRC staff performed their own detailed analyses to support these conclusions and the revised rule. Instead it seems the NRC adopted the qualitative arguments of the parties that would directly benefit from this change. There is also no indication that the Commission or staff have considered the economic costs of shipping disruption, increased public resistance to shipments, and decontamination that would result from a radionuclide release from a plutonium shipment.

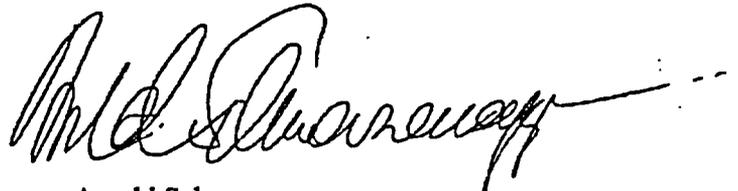
In addition to not adequately addressing the concerns that we have already stated, NRC neglected to address other substantial technical comments submitted that oppose the rule change. For example, we understand that comments were submitted by the Environmental Evaluation Group (EEG) on July 26, 2002 and receipt by NRC of the comments was acknowledged on August 19, 2002. Since these comments were not acknowledged nor responded to in the August 15, 2003 documents that were available to the Commission when they voted on the final rule in October 2003, the Commission based its decision upon incomplete information..

In light of NRC's failure to adequately address comments raised in our July 29, 2002 letter and the significant omission of EEG's technical comments from the materials reviewed, we request that the NRC reconsider its position on the elimination of the double containment requirement based upon our continued concerns. We believe that, if provided a more complete technical evaluation of these issues, the Commission will reach a different conclusion regarding the double containment requirement.

Thank you for your time and attention to this matter.

Sincerely,


Janet Napolitano
Governor of Arizona

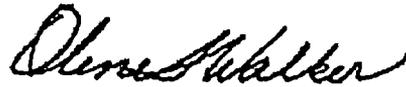

Arnold Schwarzenegger
Governor of California

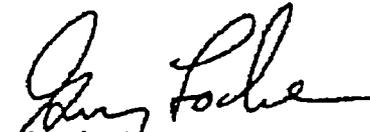
Nils J. Diaz, Chairman
March 11, 2004
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Ken C. Guinn
Governor of Nevada


Bill Richardson
Governor of New Mexico


Ted Kulongoski
Governor of Oregon


Olene S. Walker
Governor of Utah


Gary Locke
Governor of Washington


Dave Freudenthal
Governor of Wyoming

Enclosures: Western Governors' 7/29/02 letter

cc: The Honorable Norman Y. Mineta, U. S. Department of Transportation
The Honorable Tom Ridge, U. S. Department of Homeland Security
The Honorable Spencer Abraham, U. S. Department of Energy
The Honorable Patricia Madrid, New Mexico Attorney General
Dr. Matthew Silva, Environmental Evaluation Group
Dr. Paul Detwiler, Acting Manager, DOE Carlsbad Field Office

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Arnold Schwarzenegger
State of California

Subject: Amendment to 10 CFR71, Packaging and Transportation of
Radioactive Material.

Kenny Guinn
State of Nevada

Dear Chairman Diaz:

Bill Richardson
State of New Mexico

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Ted Kulongoski
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Further, since the September 11, 2001 attacks on our country, there is significantly greater national concern about the protection of radioactive materials. In response to this concern, the NRC itself has taken a number of initiatives in other areas to increase security and safety. Yet there is no indication in the responses to comments contained in the NRC August 15, 2003 Rulemaking Affirmation that NRC has conducted any post 9/11 risk analyses or seriously considered the possibility that a single contained package would be less secure in a terrorist attack.

July 29, 2002

Richard A. Meserve, Chairman
Nuclear Regulatory Commission
One White Flint North Building
11555 Rockville Pike
Rockville, Maryland 20852

Jane Dee Hull
State of Arizona

Gray Davis
State of California

Mike Johanns
State of Nebraska

Kenny Guinn
State of Nevada

Gary E. Johnson
State of New Mexico

John A. Kitzhaber, M.D.
State of Oregon

Michael O. Leavitt
State of Utah

Gary Locke
State of Washington

Jim Geringer
State of Wyoming

Attn. Rulemaking and Adjudications Staff

Subject: Proposed Rulemaking Pursuant to Provisions of
10 CFR 2.802 Regarding the "Special Requirements of
Plutonium Shipments," 10 CFR 71.63, NRC Docket No.
PRM-71-12

Dear Chairman Meserve:

For the reasons set forth below, we the undersigned strongly oppose the Nuclear Regulatory Commission (NRC) proposal under Issue 17 to remove the double containment requirement of Sec. 71.63(b) for shipments of radioactive material containing quantities of plutonium exceeding 20 curies. Existing container requirements for these shipments represent the minimum standards necessary for safety, security, and public acceptance. We believe that the NRC's proposed relaxation of these requirements would be unacceptable. We also strongly endorse the NRC's proposal to retain the requirement that shipments whose contents exceed 20 curies of plutonium must be made in a solid form as provided under Section 71.63(a).

The proposed rule change to remove the double containment requirement is inconsistent with our nation's commitment to reducing vulnerabilities to emerging terrorist threats. Given the heightened awareness of possible terrorist attacks, widespread public fear of anything "nuclear" or "radioactive", and public concern over the safety of nuclear waste shipments, we believe that the NRC should not relax the double containment requirement until the NRC completes a valid safety assessment comparing the vulnerability of single versus double containment to acts of terrorism. A recent National Academy of Sciences study to develop recommendations for making the nation safer against terrorism concluded that the NRC should "tighten regulations for obtaining and possessing radiological sources that could be used in terrorist attacks, as well as requirements

Chairman Meserve
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for securing and tracking these sources." Clearly, the trend post-September 11 is toward stricter, rather than more relaxed, safety standards for radioactive materials.

The original rationale for establishing the double containment requirement in 1974 is still valid. In 1974, the Atomic Energy Commission (AEC) imposed the double containment requirement, when large numbers of plutonium shipments were anticipated from commercial reprocessing of spent nuclear fuel. The AEC's regulatory concern was based on the increased possibility of human error combined with the expected increase in the number of shipments, and that this would yield an increased probability of leakage during shipment. Although commercial reprocessing was abandoned in the United States in the late 1970s, a large increase in plutonium shipments is once again anticipated from the United States Department of Energy's (DOE) programs for facilities' clean-up, waste management, R & D, and weapons dismantlement. With such an increase in shipments, the potential for human error (e.g., improperly assembled and closed packages) and transport incidents would similarly be expected to increase.

The NRC justifies its recommendation for eliminating the double containment requirement by arguing that "the worldwide performance record over 40 years of Type B packages demonstrates that a single containment barrier is adequate." However, this record only reflects accidental releases of plutonium, not potential deliberate acts of aggression or terrorism. As no new risk-related studies were cited in the proposed rulemaking, it appears that none have been conducted on this issue.¹ Further, the petitioner who originally proposed the rule change argues that single containers would be safer for the personnel who currently must handle the inner container. Adopting a single containment requirement may, in effect, just be shifting the probabilities of risk from the package handlers to the general public. However, until studies are done, such a shift cannot be justified.

¹It is worth noting that in June 1986 the Environmental Evaluation Group (EEG) issued a report entitled "EEG-33: Adequacy of TRUPACT-1 Design for Transporting Contact-Handled Transuranic Waste to WIPP." On page -iv- of this document, EEG concluded: *A principal advantage of a TRUPACT with double containment is the estimated decrease from 12 to .02 in the number of accidents involving radionuclide releases during the WIPP Project. Even minor accidents involving little public radiation exposure are costly to monitor and clean up and can decrease public confidence in the safety of radioactive material shipments. An additional advantage of double containment is the extra protection it is expected to provide in the event of a low probability (0.1-1%) /high consequence accident. These very severe accidents could result in up to 10-30 latent cancer fatalities with the present design. Double containment is estimated to reduce this by at least 60% to 80%.*

Chairman Meserve
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Managing the transportation of transuranic (TRU) waste from the DOE facilities to the Waste Isolation Pilot Plant (WIPP) in southeastern New Mexico is the joint responsibility of federal, state, local, and tribal governments. For more than 10 years, the Western Governors Association, which consists of 21 western states and territories, has assisted its member states in the development and coordination of a WIPP transportation program that would be acceptable to the public. At the heart of this WIPP transport safety program is the TRUPACT II double containment packaging. The public was led to believe that the extra barrier provided by double containment along with adoption of the other transportation safety protocols would lead to safe shipments. We are concerned that removal of the double containment requirement could seriously erode public confidence in the WIPP transportation safety program.

In the two and a half years since WIPP opened, the WIPP transport safety protocols have been fully implemented and are now accepted by most of the people along shipment corridors. We believe strict adherence to these protocols has not only resulted in the safe and uneventful transportation of more than 1,000 truckloads of TRU waste to WIPP, but also fostered public confidence as well. It is our goal to ensure that record will continue. If the rule on double containment is relaxed, this safety record could be jeopardized unless the NRC obtains scientific evidence that demonstrates beyond a reasonable doubt that single containment is as safe as double containment. The NRC should also weigh the potential damage to public confidence in the WIPP shipments, if the double containment requirements are relaxed.

In conclusion, we believe that it is inappropriate for the NRC to reduce the required levels of protection for plutonium shipments, when there is no compelling technical or scientific basis provided for doing so, the numbers and quantities of plutonium shipments are expected to sharply increase, and concern about potential acts of aggression against radiological material shipments has risen. The NRC's proposal to relax the double containment requirement for plutonium shipments is flawed in its failure to provide the necessary analyses needed to compare the costs, safety benefits, and radiation exposure trade-offs for single versus double containment or to demonstrate that the existing regulations are overly burdensome. We are concerned that eliminating the requirement for double containment could jeopardize existing transportation programs, such as the WIPP Transportation Safety Program. The DOE's commitment to using double containment packages for transporting wastes to WIPP is fundamental to the WIPP Transportation Safety Program and the public acceptance of these shipments. Therefore, we strongly oppose the proposed elimination of the double containment standard.

Should the NRC continue to pursue the proposal to relax the plutonium shipment double containment standards, we believe it necessary for the NRC to conduct a series of hearings on the rulemaking, with at least one of those hearings held in the West.

Chairman Meserve
July 29, 2002
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Sincerely,


Jane Dee Hull
Governor of Arizona


Gray Davis
Governor of California

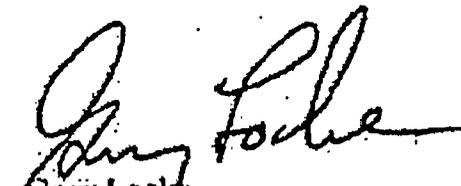

Mike Johanns
Governor of Nebraska

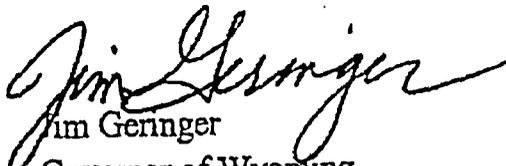

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Gary Locke
Governor of Washington


Jim Geringer
Governor of Wyoming

Cc: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention:
Rulemaking and Adjudications Staff.