

EDO Principal Correspondence Control

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FINAL REPLY:

Matthew Silva
Environmental Evaluation Group (EEG)

TO:

Martin Virgilio

FOR SIGNATURE OF :

** PRI **

CRC NO: 04-0226

Chairman Diaz

DESC:

Position on the Elimination of the Double
Containment Requirement

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April 8, 2004

Dr. Martin J. Virgilio, Director
Office of Nuclear Material Safety and Safeguards
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Dr. Virgilio:

Thank you for your March 1, 2004 reply to my letter of December 17, 2003 concerning the omission of EEG's comments from consideration by the Commission on the Double Containment of Plutonium Issue (PRM-71-12). The procedure that was followed for amending the Federal Register to respond to our comments is probably the NRC's required method for correcting an internal administrative error. However, we find the response itself inadequate. Also, there is no indication that the Commissioners were involved in this amendment to the Federal Register. Therefore, we agree with the statement by the eight Western Governors in their March 12, 2004 letter to Chairman Diaz: "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."

The main reasons we believe the response in the Federal Register amendment is inadequate can be summarized as follows:

(1) Although the NRC has concluded there would be less radiation dose to workers if the double containment requirement was eliminated, there is no indication that the staff performed their own analyses or reviewed/observed time motion studies or looked at actual dose data for the one double contained package (TRUPACT-II) that dominates current shipping. Rather, the staff makes statements such as "agrees that removal of double containment would result in reduced risk to radiation workers"; "the NRC believes worker dose would be reduced"; and "elimination of the double containment requirement will likely result in a reduction in worker radiation exposure." EEG's detailed analysis concluded there would be less radiation exposure with double containment.

(2) The Federal Register amendment response to EEG's comments on the A₁/A₂ issue

and the weight penalty from double containment was essentially that these issues are not important. Rather, the important point is that "the NRC believes the decision to eliminate double containment is risk informed and reduces an unnecessary regulatory burden." Also, "the primary reason for removing the double containment requirement is that the NRC has no technical justification or basis for maintaining double containment for plutonium or any other radionuclide." Yet, there is no discussion of why elimination of double containment is risk informed or any demonstration that the double containment requirement is a regulatory burden. It is EEG's position (which is developed more in EEG-89 than in the July 26, 2002 comments) that double containment has placed no practical burden on WIPP shipments because alternate single contained packages (TRUPACT-I, which was never certified and TRUPACT-III whose certification is pending), do not have advantages (relative to TRUPACT-II) in package weight, allowable payload, and waste volume capacity.

(3) The Federal Register discussion states: "NRC continues to believe that a separate inner container provides an additional barrier to the release of plutonium in an accident (just as a package with triple containment would provide an even greater barrier to the release of plutonium in an accident). However, this type of approach is neither risk informed or performance based." The discussion offers no insight as to how the staff balanced whatever (theoretical) burden there might be to double containment versus the advantages of avoiding an accidental release that would have radiological contamination, shipping disruption, and public perception detriments in order to determine that double containment was not risk informed or performance based. Recently the NRC staff cites the transportation safety record of the last 30 years. Such complacency is reminiscent of old attitudes, which led Chairman Diaz recently to make the following statements regarding the Three Mile Island Accident: "Few experts thought that such a severe accident was even likely to happen...Confidence in the technology was very high."

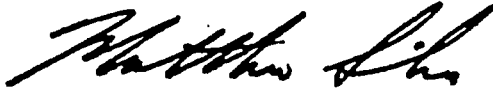
(4) The staff devotes a lot of attention to the requirement that liquid plutonium should not be shipped but downplays two other reasons for originally incorporating the double containment rule: (1) there would be a large number of shipments in the future; and (2) some waste will be shipped in respirable form. There will be over 20,000 future shipments to WIPP and much of this waste will contain respirable material.

(5) EEG's last major concern involves the threat of terrorist activity. We believe there is a greater likelihood of a radionuclide release from a terrorist attack on a single contained package. The removal of a barrier against release at this time of increased terrorist threat appears to be undesirable and inconsistent with the many nuclear security enhancements the NRC has made since September 11, 2001.

Because of the above considerations, EEG requests that the Commission reconsider its position on the elimination of the double containment requirement. This reconsideration should include a detailed technical response to the comments in EEG's July 26, 2002 letter and in EEG-89.

Thank you for reconsidering this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Silva". The signature is fluid and cursive, with the first name "Matthew" being larger and more prominent than the last name "Silva".

Matthew Silva
Director

MS:JC:ss:pf

cc: Nils J. Diaz, Chairman, USNRC
Ed McGaffigan, Commissioner, USNRC
Jeffrey S. Merrifield, Commissioner, USNRC
Annette L. Vietti-Cook, Secretary, USNRC
Ned Farquar, Environment Policy Advisor Office of the Governor of NM
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NMEMNRD