

EDO Principal Correspondence Control

FROM: DUE: 04/29/05

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FINAL REPLY:

Representative Edward J. Markey

TO:

Chairman Diaz

FOR SIGNATURE OF :

\*\* PRI \*\*

CRC NO: 05-0209

Chairman Diaz

DESC:

ROUTING:

Changes to Rulemaking that May be Considered by  
the Commission to Remove from NRC Regulation  
Wastes Believed to be Subject to NRC Control

Reyes  
Virgilio  
Kane  
Merschhoff  
Silber  
Dean  
Burns  
Hagan, ADM  
Cyr, OGC

DATE: 04/19/05

ASSIGNED TO:

CONTACT:

NMSS

Strosnider

SPECIAL INSTRUCTIONS OR REMARKS:

Template: SECY-017

E-RIDS: SECY-01

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

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ACTION OFFICE: EDO

LOGGING DATE: 04/18/2005

AUTHOR: REP Edward Markey  
AFFILIATION: CONG  
ADDRESSEE: Nils Diaz

SUBJECT: Express concerns about rulemaking that may be considered by the Comm to remove from NRC regulation wastes believed to be subject to NRC control..

ACTION: Signature of Chairman  
DISTRIBUTION: RF, OCA to Ack

LETTER DATE: 04/18/2005

ACKNOWLEDGED No

SPECIAL HANDLING: Comr. Correspondence

NOTES:

FILE LOCATION: ADAMS

DATE DUE:

5/3/05

DATE SIGNED:

EDWARD J. MARKEY  
7TH DISTRICT, MASSACHUSETTS

ENERGY AND COMMERCE COMMITTEE

RANKING MEMBER  
SUBCOMMITTEE ON  
TELECOMMUNICATIONS AND  
THE INTERNET

SELECT COMMITTEE ON  
HOMELAND SECURITY

RESOURCES COMMITTEE

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2107**

2108 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-2107  
(202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101  
MEDFORD, MA 02155  
(781) 396-2900

188 CONCORD STREET, SUITE 102  
FRAMINGHAM, MA 01702  
(508) 875-2900  
[www.house.gov/markey](http://www.house.gov/markey)

April 18, 2005

The Honorable Nils J. Diaz  
Chairman  
Nuclear Regulatory Commission  
One White Flint North Building  
11555 Rockville Pike  
Rockville, MD 20852-2738

Dear Mr. Chairman:

I am writing to express my concerns about a rulemaking that may soon be considered by the Commission to remove from NRC regulation wastes that I believe should be subject to NRC control. I believe that this rulemaking is misguided, poses real risks to public health and safety, and should not be undertaken.

I have learned that the Commission may be planning to proceed with a rulemaking that would generically release some radioactive materials from regulatory control, revisiting a failed policy of the 1990s. As you know, in the early 1990s, the Commission first adopted its 'Below Regulatory Concern' (BRC) policy, which would have deregulated a significant portion of "low-level" radioactive waste. This would have allowed these materials to be recycled into consumer products, or disposed of in municipal landfills or other unlicensed facilities. The policy resulted in significant public opposition which culminated in state and federal legislation that prevented the Commission from moving forward with its plans. In particular, in 1992 Congress revoked the NRC's BRC policies which would have allowed some nuclear waste, materials, emissions and practices to be considered below regulatory concern. The actions now being taken by NRC appear to violate the spirit of that Congressional action.

Subsequent to Congressional action on this matter, the Commission requested a study on the subject to be conducted by the National Academy of Sciences (NAS), which released its report entitled 'The Disposition Dilemma' in 2002. Rather than endorse the Commission's BRC plan, the NAS report instead concluded that

"The committee found that in the past, the USNRC failed to convince any environmental and consumer advocacy groups that the clearance of slightly radioactive solid material can be conducted safely and failed to convince certain industry groups that such clearance is desirable. Most of the issues and concerns expressed today by many consumer advocacy and environmental groups and some industry groups are the same as were expressed during the controversy over the BRC policy in 1990. Furthermore, a legacy of distrust of the USNRC has developed among most of the environmental

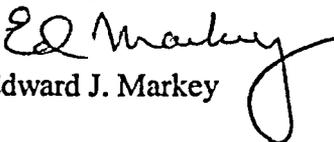
stakeholder groups" regarding the subject of low-activity waste control and that "[r]establishing trust will require concerted and sustained effort by the USNRC, premised on a belief that stakeholder involvement will be important and worthwhile, as well as a prerequisite for making progress."

I believe that if, in the face of this advice, the Commission now is planning to embark on a rulemaking to generically release radioactive waste from regulatory control, the NRC will be jeopardizing public health and safety and further undermining the already limited levels of trust the public has in the Commission. That, in my view, would be extremely unfortunate. Because of the seriousness of this matter, I ask for your prompt response to the following questions:

- 1) Please provide your expected timeline for this rulemaking to occur, including all opportunities the public will have to participate in the process.
- 2) If the Commission does intend to move forward with this rulemaking, please fully describe how it plans to address the concerns of the public and industries that want to avoid the unnecessary additional radiation exposure and risk that would result from its implementation.
- 3) Please provide a list itemizing all resources expended by the Commission on developing or supporting policy or rulemaking proposals to release radioactive materials from regulatory control since 1992, including the total amount of funds spent on each item, the amount of staff time devoted to each item, contracts with the NAS or other entities to study or support Commission activities, or other expenses.

Thank you very much for your attention to this important matter. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,

  
Edward J. Markey