

May 16, 2005

By Facsimile and U.S. Mail

Grace Kim
Office of the General Counsel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

**Re: Nuclear Information and Resource Service et al. v. Nuclear Regulatory
Commission, No. 04-71432**

Dear Ms. Kim:

This is to confirm our previous discussion and e-mail exchange in which we agreed to disagree over the proper contents of the Index of the Record.

As set out in my May 9 and May 4, 2005 letters, we believe that rulemaking notices by the Department of Transportation and comments sent to the Department of Transportation in connection with its parallel rulemaking, closely coordinated with the rulemaking in this matter, are part of the Record. However, you have declined to include them in the Index of the Record.

As I understand your proposal, NRC will list the disputed documents in the Index of the Record in order to facilitate our common reference to them, but will include a disclaimer in which NRC sets out its position that the documents are not part of the Record. We accept this procedure in order to avoid a motion battle that would likely not be resolved prior the due date for our opening brief. The parties will be free to address the status of the documents in their substantive briefs instead of in preliminary motions.

Please arrange to list the following disputed documents:

1. DOT, 49 CFR Parts 171, 172, *et al.*, RIN 2137-AD40, "Hazardous Materials Regulations; Compatibility With the Regulations of the International Atomic Energy Agency," Notice of Proposed Rulemaking, 67 Fed. Reg. 21330, Apr. 30, 2002.
2. DOT, 49 CFR Parts 171, 172, *et al.*, RIN 3150-AG71, "Hazardous Materials Regulations; Compatibility With the Regulations of the International Atomic Energy Agency," Final Rule, 69 Fed. Reg. 3632 *et seq.*, Jan. 26, 2004

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3. DOT, 49 CFR Parts 171, 172, *et al.*, RIN 2137-AD39, "Hazardous Materials Regulations; Compatibility With the Regulations of the International Atomic Energy Agency," Advance Notice of Proposed Rule, 64 Fed. Reg. 72633 *et seq.*, Dec. 28, 1999.
4. J. Johnsrud, PhD., New England Coalition on Nuclear Pollution and Environmental Coalition on Nuclear Power - Request for Extension of the Comment Period, July 12, 2002, available as document RSPA-1999-6283-151 at Department of Transportation -website for docket number 6283, <http://dms.dot.gov/search/searchFormSimple.cfm?CFID=9622053&CFTOKEN=97896298>.
5. R. Scott and D. Huizenga, Department of Energy, Office of Environmental Management, Jun. 29, 2000, available as document RSPA-1999-6283-55.
6. Comments of Kerr-McGee, July 30, 2002, available as document RSPA-1999-6283-121.
7. J. Roberson, Asst. Secretary for Environmental Management, Department of Energy, Aug. 7, 2002, available as document RSPA-1999-6283-162.
8. K. Hancock, Director, Offices of Transportation, Integration and Disposition, and Environmental Management, Department of Energy, July 29, 2002, available as document RSPA-1999-6283-124.

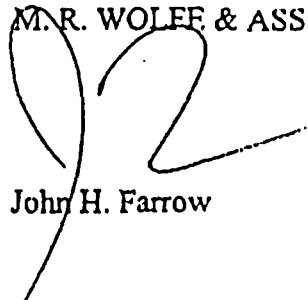
We no longer seek to include in the Record the NIRS appeal to DOT or the DOT denial of that appeal (RSPA-1999-6283-203 and 204), which were listed on the attachment to my May 4, 2005 letter.

As we discussed on May 6, 2005, NRC has agreed that the remaining documents listed on the attachment to my May 4, 2005 letter (except the NIRS appeal and its denial) and the documents listed in my May 4, 2005 letter will be included in the Index of the Record without any dispute.

Please let me know if you have any questions about this. We appreciate your help.

Yours sincerely,

M. R. WOLFE & ASSOCIATES



John H. Farrow

JHF: hs