January 24, 2007

The Honorable Thomas R. Carper
Chairman, Subcommittee on Clean Air
and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am writing to inform you of the status of NRC's rulemaking efforts to implement Section 651(e) of the Energy Policy Act of 2005 (EPAct) on "Treatment of Accelerator-Produced and Other Radioactive Material as Byproduct Material." Section 651(e) requires NRC to issue final regulations within 18 months from the date of enactment of the EPAct (by February 7, 2007) and to cooperate with States to the maximum extent practicable in promulgating regulations for accelerator-produced and other naturally occurring radioactive material. As discussed below, NRC has made significant progress toward completion of the final rule. However, in order to ensure that the rule has a more robust technical basis, and provide the appropriate time for stakeholder input, we will not be able to meet the February 7, 2007 date, but expect to publish the final rule in the spring of 2007.

The NRC has been actively working with both the Agreement States and the non-Agreement States, through the Organization of Agreement States and the Conference of Radiation Control Program Directors, throughout the rulemaking process. In addition, the NRC staff has consulted other stakeholders, including other Federal agencies, professional organizations, and the medical community, about the rulemaking. The NRC also held public meetings with stakeholders to discuss the rulemaking on November 9, 2005, and August 22, 2006.

After receiving comments from the States on a draft of the proposed rule, NRC published the proposed rule in the *Federal Register* (71 FR 42955) on July 28, 2006, for a 45-day public-comment period. The NRC received a total of 39 comment letters on the proposed rule. Currently, NRC staff is working to resolve public comments and develop a more robust technical basis for the regulatory requirements. We intend to continue to work closely with the States and to ensure that stakeholders' comments are appropriately addressed.

As authorized by Section 651(e) of the EPAct, on August 31, 2005, the Commission issued a waiver to: (1) allow States to continue with their regulatory programs for NARM; (2) allow persons engaged in activities involving NARM to continue with their operations in a safe manner; and (3) allow continued use of radiopharmaceuticals for medical purposes. The waiver is in effect through August 7, 2009, unless the Commission terminates it sooner. The Commission plans to terminate the waiver after the final rule is issued, in stages, starting from

the effective date of the rule and ending on August 7, 2009. The Commission believes that the public health and safety and common defense and security are adequately protected under the existing waiver, while NRC continues to prepare the final rule.

We will keep you and your staff informed of the progress of this rulemaking.

Sincerely,

/RA/

Dale E. Klein

cc: Senator George V. Voinovich

Identical letter sent to:

The Honorable Thomas R. Carper
Chairman, Subcommittee on Clean Air
and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator George V. Voinovich

The Honorable Barbara Boxer
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator James M. Inhofe

The Honorable Rick Boucher
Chairman, Subcommittee on Energy
and Air Quality
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative J. Dennis Hastert

The Honorable John D. Dingell
Chairman, Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative Joe Barton