August 9, 2007

Mr. Theodore Willke
Director, Office of Hazardous Materials Safety
DOT/PHMSA/PHH-1
1200 New Jersey Avenue, S.E.
Washington, DC 20590-0001

Dear Mr. Willke:

From 2001 to 2003, the U.S. Nuclear Regulatory Commission (NRC) staff established an Interagency Jurisdictional Working Group (IJWG) to resolve jurisdictional and technical issues associated with regulating low-concentrations of uranium and thorium. Because your agency previously participated in the IJWG, I invite you to continue your involvement. Your former agency representative was Mr. Fred Ferate.

In 2003, the NRC staff provided recommendations (see Enclosure), which were based upon the IJWG's efforts, to the Commission. As part of these recommendations, the staff suggested that NRC's regulatory authority should be limited to uranium and thorium that is extracted and/or purposely concentrated for use in the nuclear fuel cycle or for its chemical, physical, or radiological properties. As a result of this proposed change in jurisdiction, agencies other then NRC would be responsible for regulating uranium and thorium that was not extracted and/or purposely concentrated for such uses. Although the Commission agreed that the proposed approach was the most efficient way to address the issue, the Commission then believed the probability of Congress passing legislation for such changes was very limited, and thus directed the staff to not pursue such changes.

In 2006, the Commission reconsidered this decision and directed the staff "to accelerate the activities of the IJWG, with a goal toward developing an approach to more clearly specify NRC's authority over source material to uranium and thorium that is extracted and/or purposely concentrated for the use of uranium and thorium. The staff should pursue either a legislative approach to redefine source material, or alternative approaches that achieve the same end." Such an approach would remove NRC's authority over activities, such as mineral extraction processes and treatment of uranium in drinking water, and instead allow other agencies to regulate such processes consistent with their regulations for other naturally occurring radioactive materials. The NRC staff has determined that the best approach to reaching the Commission's goal is to reconvene the IJWG and reconfirm that all involved agencies continue to favor the proposed approach.

I anticipate that the IJWG will conduct its first meeting in September or October 2007. This 1-day meeting will be held in the Rockville, Maryland. The result of the meeting will determine the need for future meetings and associated schedules.

I hope that you will be able to support this project, which we anticipate will be a major step toward resolving this issue. If you need additional information on this issue before assigning your staff to the working group, please contact Mr. Gary Comfort of my staff at 301-415-8106 or by email at gcc1@nrc.gov. I would appreciate if you could confirm your previous representative or provide the name of a new representative for the working group to Mr. Comfort by August 24, 2007.

Sincerely,

/RA George Pangburn Acting for/

Charles L. Miller, Director
Office of Federal and State Materials and
Environmental Management Programs

Enclosures: SECY-03-0068

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