

EDO Principal Correspondence Control

FROM: DUE: 03/25/09

EDO CONTROL: G20090159  
DOC DT: 03/19/09  
FINAL REPLY:

Representative Edward J. Markey  
Representative Jim Matheson

TO:

Chairman Klein

FOR SIGNATURE OF :

\*\* PRI \*\*

CRC NO: 09-0104

Chairman Klein

DESC:

Classification of Depleted Uranium as Class A  
Waste (EDATS: SECY-2009-0124)

ROUTING:

Borchardt  
Virgilio  
Mallett  
Ash  
Ordaz  
Cyr/Burns  
Cyr, OGC  
Schdmit, OCA  
Bagley, OEDO  
Rivera, OEDO

DATE: 03/19/09

ASSIGNED TO:

FSME

CONTACT:

Miller

SPECIAL INSTRUCTIONS OR REMARKS:

Response should be prepare so that it can be made  
public. Non-public information should be  
identified and provided under separate cover.  
Response due to OEDO by 9:00 a.m., March 25, 2009.

Template: SECY-017

E-RIDS: SECY-01

# EDATS

Electronic Document and Action Tracking System

**EDATS Number:** SECY-2009-0124

**Source:** SECY

## General Information

**Assigned To:** FSME

**OEDO Due Date:** 3/25/2009 9:00 AM

**Other Assignees:**

**SECY Due Date:** 3/26/2009 5:00 PM

**Subject:** Classification of Depleted Uranium as Class A Waste

**Description:**

**CC Routing:** OGC; OCA

**ADAMS Accession Numbers - Incoming:** NONE

**Response/Package:** NONE

## Other Information

**Cross Reference Number:** G20090159, LTR-09-0104

**Staff Initiated:** NO

**Related Task:**

**Recurring Item:** NO

**File Routing:** EDATS

**Agency Lesson Learned:** NO

**Roadmap Item:** NO

## Process Information

**Action Type:** Letter

**Priority:** Medium

**Sensitivity:** None

**Signature Level:** Chairman Klein

**Urgency:** NO

**OEDO Concurrence:** YES

**OCM Concurrence:** NO

**OCA Concurrence:** NO

**Special Instructions:** Response should be prepared so that it can be made public. Non-public information should be identified and provided under separate cover. Response due to OEDO by 9:00 a.m., March 25, 2009.

## Document Information

**Originator Name:** Rep. Edward J. Markey/Rep. Jim Matheson

**Date of Incoming:** 3/19/2009

**Originating Organization:** Congress

**Document Received by SECY Date:** 3/19/2009

**Addressee:** Chairman Klein

**Date Response Requested by Originator:** 4/2/2009

**Incoming Task Received:** Letter

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

Date Printed: Mar 19, 2009 13:57

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**PAPER NUMBER:** LTR-09-0104 **LOGGING DATE:** 03/19/2009  
**ACTION OFFICE:** EDO

**AUTHOR:** REP Edward Markey  
**AFFILIATION:** CONG  
**ADDRESSEE:** Dale Klein  
**SUBJECT:** Concerns NRC's action to classify depleted uranium as Class A waste

**ACTION:** Signature of Chairman  
**DISTRIBUTION:** RF, OCA to Ack...contact Amy Powell

**LETTER DATE:** 03/19/2009  
**ACKNOWLEDGED:** No  
**SPECIAL HANDLING:** Commission Correspondence

**NOTES:** Response should be prepared so that it can be made public..  
Non-public information should be identified and provided  
under separate cover.....Response due NLT April 2

**FILE LOCATION:** ADAMS

**DATE DUE:** 03/26/2009 **DATE SIGNED:**

EDO --G20090159

**COMMISSION OFFICE AND STAFF INSTRUCTIONS FOR PROCESSING  
CONGRESSIONAL REQUESTS FOR DOCUMENTS**

Congressional Association

- Chairman, Oversight Committee
- Member, Oversight Committee
- Individual Member of Congress
- Committee Staff

Documents to be released:

- Un-redacted Release
- Redacted Release (based on FOIA/Privacy Act procedures)
- Only publicly available documents

Provide documents with the following listing:

- Classified National Security Information
  - Safeguards Information
  - Proprietary Information
  - Privacy Information
  - Sensitive Investigatory Information
  - Sensitive Adjudicatory Information or Attorney-Client Information
  - Sensitive Pre-decisional Information
  - Not Publicly Available, but not of concern if publicly released
  - Publicly Available

Cover Letter

- If documents are to be provided and are not to be made public by the requester, please include a statement in the cover letter that documents are sensitive and not to be publicly released. Mark each page of sensitive documents to be provided with "Not for Public Disclosure".

*Response should be prepared that can be made public. Non public*

Due Date for Completion of Staff Review: 3/26/09 *information*

OCA Contact: Amy Powell *should be identified and provided under separate cover.*

**Congress of the United States**  
**Washington, DC 20515**

March 19, 2009

The Honorable Dale E. Klein  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Chairman Klein:

We write to you with great concern regarding the Commission's recent action to classify depleted uranium as Class A waste. This decision has been taken in apparent disregard for the fact that depleted uranium poses a risk to health and safety that is greater than other Class A wastes, and, as disturbingly, may undermine long-held policies related to the disposal of radioactive materials.

Through the Atomic Energy Act of 1954 and the Low-Level Radioactive Waste Policy Act and its Amendments, Congress required the Commission to establish clear and effective criteria for the classification of radioactive waste. The fundamental purpose of creating distinct waste classes is to acknowledge that different materials pose different risks to health and safety, and that therefore different materials require different long-term disposal methods. Classification is predicated upon an analysis of both the hazard posed by a given material, and the steps required to dispose of it in a safe and secure manner. Class A waste is meant to be the lowest classification, meaning that the material poses the least threat to health and safety and may be most easily disposed.

While the Commission did not categorize depleted uranium into a specific waste class in the early 1980s during its rule making process, it considered doing so. In fact, the Draft Environmental Impact Statement (DEIS) for 10 CFR 61 established that only depleted uranium below the concentration of  $0.05 \mu\text{Ci}/\text{cm}^3$  could be considered Class A. This was removed from the final rule because there was no depleted uranium waste stream in existence, leaving any potential stream of the material in a regulatory limbo. The depleted uranium waste stream which will flow from commercial uranium enrichment facilities is expected to be  $0.5 \mu\text{Ci}/\text{cm}^3$ , that is, ten times greater than what the Commission believed was safe when the DEIS was written.

The requirements for safe and secure disposal of depleted uranium are much greater than what is required for Class A waste. In fact, the Commission's technical analysis shows that the safe dispose of depleted uranium will require increased waste disposal depth and radon barriers. These requirements are most similar to those common for Class C waste, not Class A.

This arbitrary and capricious mischaracterization of depleted uranium as Class A waste will undermine public confidence in the waste classification system, may increase risks to public health and safety, and raises the possibility that additional, uncharacterized and possibly even more dangerous materials could be similarly treated in the future.

On March 10, 2009, we sent a number of questions to the Commission regarding low-level radioactive waste. Included in that query were questions regarding the classification of depleted uranium. To date, the Commission has neither answered nor responded to these questions. In light of this fact, we respectfully request expedited answers to those questions, and additionally ask you to provide the Energy and Commerce Committee Subcommittee on Energy and the Environment with answers to the following questions:

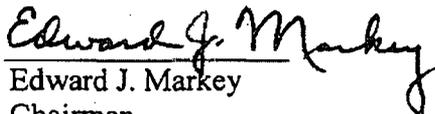
1. The Draft Environmental Impact Statement for 10 CFR 61 proposed that only depleted uranium below the concentration of  $0.05 \mu\text{Ci}/\text{cm}^3$  could be considered Class A. Why should depleted uranium at ten times this concentration be treated as Class A waste?
2. What disposal procedures have been required for depleted uranium? Are these different in any way from the disposal procedures commonly required for Class A waste? Are these procedures similar in any way to the disposal procedures commonly required for Class C waste?
3. Could uranium tailings be considered Class A under the actions taken by the Commission?
4. Could any other materials be classified as Class A under the action taken by the Commission?

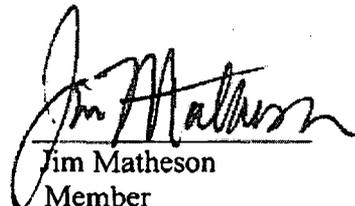
In addition, we also request that within 10 business days, or no later than close of business, April 2, 2009, please provide the Subcommittee with copies of all records (including but not limited to written and electronic communications, phone calls logs or notes, meeting notes or minutes, memoranda, and analyses) relating to the Commission's decision to allow depleted uranium or other materials not currently classified as Class A to be considered as Class A waste, including internal Commission records, all records involving EnergySolutions, Inc., and records involving the Department of Energy.

The Commission's action to classify depleted uranium as Class A even though it poses more severe risks to health and safety, and requires much greater effort for disposal, seems to be unsupportable and inconsistent with the intent of the law. The Subcommittee intends to carefully review the basis for this action.

The Subcommittee looks forward to your prompt response to these questions, and to receipt of the requested information.

Sincerely,

  
Edward J. Markey  
Chairman  
Subcommittee on  
Energy and the Environment

  
Jim Matheson  
Member  
Subcommittee on  
Energy and the Environment