



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

IN RESPONSE, PLEASE
REFER TO: M841004B

October 5, 1984

OFFICE OF THE
SECRETARY

MEMORANDUM FOR: William J. Dircks, Executive Director
for Operations

Herzel H.E. Plaine, General Counsel

FROM: Samuel J. Chilk, Secretary

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION/DISCUSSION
AND VOTE, 1:00 P.M., THURSDAY, OCTOBER 4,
1984, COMMISSIONERS' CONFERENCE ROOM, D.C.
OFFICE (OPEN TO PUBLIC ATTENDANCE)

I. SECY-84-352 - Diablo Canyon - Joint Intervenors' Request for
a Hearing on Pacific Gas and Electric's Request for an
Extension of the Low-Power License

The Commission, by a 5-0 vote, approved an order denying the request by Joint Intervenors for a hearing on PG&E's request for an extension of the low-power license.

(Subsequently, on October 5, 1984 the Secretary signed the Order.)

II. SECY-84-358 - Petition for Stay of Part 70 License

The Commission in response to a petition by Robert Anthony on behalf of Friends of the Earth, approved by a 5-0 vote, an order denying a stay of a license amendment permitting Philadelphia Electric Company to move irradiated fuel inside the reactor building.

(Subsequently, on October 5, 1984 the Secretary signed the Order.)

III. SECY-84-350 - Denial of Petition for Rulemaking Concerning
Emergency Planning and Response for Transportation Accidents
Involving Radioactive Materials (PRM-71-6)

The Commission, by a 5-0 vote, approved a Federal Register Notice denying a petition for rulemaking which had requested that the Commission adopt regulations requiring NRC licensees be held responsible for emergency planning and response for transportation accidents involving radioactive material. The Commission notice of the denial notes that the issues raised have been overtaken by subsequent Federal actions.

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The Commission in approving also agreed to the following modifications to the notice and letters to the petitioners and Congressional committees:

1. The Federal Register Notice and letters should be revised as noted in the attached mark-up.
2. In addition the Federal Register Notice and letters should be modified to include an explanation of the reasons that it took the Commission so long to complete action on the petition and on the actions taken by the Commission during the period since its submittal.

The revised Federal Register Notice should be forwarded for signature and publication in the Federal Register.

(EDO)

(SECY Suspense: 10/31/84)

cc: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech
Commission Staff Offices
PDR - Advance
DCS - 016 Phillips



NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

Critical Mass Energy Project, et al.

[Docket No. PRM-71-6]

Denial of Petition for Rulemaking Concerning
Emergency Planning and Response for Transportation Accidents Involving
Radioactive Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of Petition for Rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-71-6) from Richard P. Pollock of the Critical Mass Energy Project on behalf of the Critical Mass Energy Project, Congressman Theodore S. Weiss (NY) and Timothy E. Wirth (CO), and 11 citizen organizations. ^{ON THE BASIS THAT ISSUES RAISED BY THE PETITIONERS HAVE BEEN OVERTAKEN BY SUBSEQUENT ACTION.} The petitioners requested that the NRC adopt regulations in four areas pertaining to the transportation of radioactive materials. ~~The NRC concludes that promulgation of a regulation in response to the petition would not serve the public interest because it would add regulations that unnecessarily duplicate existing requirements and practices.~~ Therefore, ~~the NRC has denied this petition.~~ ^{THE NRC HAS CAREFULLY CONSIDERED THE ISSUES RAISED IN THE PETITION, AS DESCRIBED HEREIN, AND HAS TAKEN THE INTO ACCOUNT IN REACHING A DECISION ON THE AREAS WHICH FALL WITHIN ITS JURISDICTION.} ADDRESSES: Copies of the petition for rulemaking, the public comments thereon, and the NRC's letter of denial are available for public inspection and copying in the NRC Public Document Room, 1717 H Street NW., Washington, DC.



Reasons for Denial

The petitioners' concerns basically relate to that portion of transportation when radioactive materials are in the care of the carriers. The Congress has authorized both the NRC and the DOT to regulate the transportation of radioactive materials. These two agencies have agreed, by Memorandum of Understanding (executed June 8, 1979), to partition their regulatory responsibilities. Generally, the DOT is responsible for regulating safety in transportation of all hazardous materials, including radioactive materials, and the NRC is responsible for review and approval of package designs for fissile materials and for other radioactive materials in quantities exceeding type A limits, as defined in 10 CFR Part 71.

The NRC has considered the petition, the public comments thereon, the conclusions reached by the NRC/DOT study group, the DOT's rules on highway routing and financial responsibility, and other related information and has ~~decided to deny the petition. The reasons for this~~ CONCLUDED THAT ~~decision are discussed below for each part of the petition:~~ THE ISSUES RAISED IN THE PETITION HAVE BEEN SUBSTANTIVELY RESOLVED BY SUBSEQUENT FEDERAL ACTION. THE FOLLOWING DISCUSSION ADDRESSES EACH PART OF THE PETITION.

Part 1: The use of special routes for the transportation of radioactive materials of all types to ensure that the shipments avoid densely populated areas and mountainous terrain."

~~The NRC has denied this part of the petition because this issue has been considered in a rulemaking proceeding by another Federal agency with concurrent subject matter jurisdiction.~~ THE DEPARTMENT OF TRANSPORTATION, WHICH IS THE FEDERAL AGENCY WITH CONCURRENT SUBJECT MATTER JURISDICTION. IN THIS MATTER, THE Materials Transportation Bureau of the Department of Transportation has conducted a rulemaking proceeding on highway routing of radioactive material shipments. AS STATED ABOVE, NRC PROVIDED THAT A COPY OF THE PETITION AND PUBLIC COMMENTS RECEIVED THEREON WERE CONSIDERED IN THE RULEMAKING PROCEEDING. The final rule was published on January 19, 1981, and became effective on February 19, 1982. The final rule was challenged by the City of New York and the State of New York and was upheld by the Second Circuit Court of Appeals. On February 27, 1984, the U.S. Supreme Court refused to review the Circuit Court's decision. The result of the Supreme Court's action was to give validity to the DOT highway routing regulations as promulgated.

The DOT rule requires carriers to use an interstate highway or an alternate "preferred route" that minimizes radiological risk. The DOT rule was based in part on NRC advice and studies concerning transportation



risks and was subject both to considerable public review and deliberation and to judicial scrutiny. The NRC does not believe it is necessary to require further restrictions beyond the DOT rule.

Part 2: The adoption of emergency plans for transportation accidents involving radioactive materials, including (a) the organization of emergency response units to carry out the plan and (b) semiannual drills with local and State law enforcement officials.

The NRC ~~has denied this part of the petition because it~~ considers the public health and safety to be adequately protected by current requirements for emergency response. Several organizations are involved in emergency response to transportation accidents: State and local personnel such as fire and police are responsible for emergency actions immediately following an accident; shippers are responsible for providing shipment hazard information; carriers are responsible for isolating and cleaning up the spilled radioactive materials; and certain Federal agencies are responsible for providing assistance to State and local governments. At the Federal level, the Federal Emergency Management Agency (FEMA) coordinates such Federal assistance; the DOT and NRC provide assistance to FEMA; and the DOE maintains radiological assistance teams that respond to radiological emergencies when requested. It is not practicable nor necessary to require shippers to duplicate the existing immediate emergency response capabilities to respond to the scene of a transportation accident.

The NRC/DOT study group considered the question of carrier's and shipper's emergency plans for transportation accidents. The study group found that, in general, the carrier (transporter) is responsible for proper care of cargo in transit. In an accident, the carrier is responsible for notifying the shippers and government authorities, isolating any spilled material from the public, and cleaning up any spilled material.

Since, in many cases, the carrier will have neither the technical expertise nor the experience and equipment to handle radioactive materials, the carrier may find it necessary to make arrangements with others to accomplish these duties. The carrier could make contractual arrangements with the shipper or any other organization that is capable of



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Part 3: The assumption by licensees of financial responsibility for any shipping accident that involves the dispersal of radioactive materials.

BELIEVES THAT

The NRC ~~has denied this part of the petition because~~ the liability for damages should be determined by the courts considering both the applicable State tort law and the particular circumstances associated with the accident.

If the origin or destination of the radioactive material being transported were a facility (for example, a nuclear power plant) for which the NRC required the licensee to have and maintain financial protection, the provisions of the Price-Anderson Act (Sec. 170 of the Atomic Energy Act of 1954, as amended) would ensure a source of funds up to \$585 million for personal injury or property damage resulting from the transportation accident. The Price-Anderson Act does not preempt applicable State tort law, but in the event of an "extraordinary nuclear occurrence" a facility licensee may be required to waive certain defenses that would otherwise be available.

Section 30 of the "Motor Carrier Act of 1980" (Pub. L. 96-296, as amended by Sec. 406 of Pub. L. 97-424) requires the Secretary of Transportation, among other things, to establish regulations on minimum levels of financial responsibility for the transportation of hazardous materials by motor vehicles. The rule implementing this provision on minimum financial responsibility was published by DOT on June 11, 1981 (46 FR 30974) and subsequently amended on February 7, 1983 (48 FR 5560), on June 28, 1983 (48 FR 29699), and on July 2, 1984 (49 FR 27288). For radioactive materials, the minimum levels of financial responsibility are \$1 million (\$5 million effective January 1, 1985) for any vehicle transporting large quantities of radioactive materials and \$500,000 (\$1 million effective January 1, 1985) for transporting radioactive materials in other than large quantities.

Aside from the question of ultimate financial responsibility, the carrier should be prepared to assume the initial costs required to discharge its responsibilities in performing emergency response actions such as confining or cleaning up the spills. In terms of costs for emergency or protective actions that may be taken by the State or local governmental agencies, these agencies can reasonably be expected to be prepared



to assume initial costs incurred as in other emergency situations such as fires and floods.

Part 4: A plan for informing the drivers of the vehicles about the nature of the material they are shipping and emergency actions they should undertake in the event of an accident.

The NRC has ~~denied this part of the petition because it~~ considers existing DOT regulations for driver information to be adequate. Present DOT regulations require that a shipment of radioactive materials be accompanied by a description of each radionuclide contained in the shipment including: the name and radioactivity of each radionuclide, the physical and chemical forms, and other information regarding labels, external radiation levels, and fissile class (49 CFR 172.203). These requirements involve a system of labels for packages, placards for vehicles, shipping paper descriptions, and other package markings.

In the final rule on highway routing of radioactive materials published by DOT in January 1981 (46 FR 5298), specific training requirements are mandated for persons transporting large quantities of radioactive materials. The training includes, among other things, a requirement that ~~the driver receive training on properties and hazards of the radioactive material transported and procedures to be followed in case of accidents or other emergencies.~~

In view of the DOT requirements, there does not appear to be a need for NRC to require shippers to provide and carriers to maintain ~~during transport~~ additional detailed emergency procedures for the driver to undertake in case of accident.

SINCE EACH OF THE ISSUES RAISED IN THE PETITION HAS BEEN SUBSTANTIVELY RESOLVED,
~~For the above reasons,~~ the NRC has denied this petition.

Dated at Washington, DC this ____ day of _____, 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

PRM-71-6

Mr. Richard P. Pollock, Director
Critical Mass Energy Project
P.O. Box 1538
Washington, D.C. 20013

*SAME CHANCES TO
NEISS + WIRTH LETTERS,
AS WELL AS CONGRESSIONAL
LETTERS.*

Dear Mr. Pollock:

This refers to your letter, dated October 31, 1977, petitioning the Nuclear Regulatory Commission (NRC) to amend its regulations concerning emergency planning and response for transportation accidents involving radioactive materials. *THE NRC HAS CAREFULLY CONSIDERED EACH OF THE ISSUES RAISED IN YOUR PETITION AND CONCLUDES*

EACH OF . . . ADDRESSED IN THE PETITION AS
~~The NRC notes that actions have been taken in the same four areas requested in your petition although they do not necessarily place requirements on NRC licensees (shippers).~~ *FOLLOWS:*

- (a) The Department of Transportation (DOT) adopted a rule on highway routing of radioactive materials requiring carriers to use an interstate highway or an alternate route that minimizes radiological risk. The DOT rule was based in part on NRC advice and studies concerning transportation risks and was subject both to considerable public review and deliberation and to judicial scrutiny. The NRC does not believe it is necessary to require further restrictions beyond the DOT rule.
- (b) Several organizations are responsible for responding to transportation accidents: State and local personnel such as fire and police for emergency actions immediately following the accidents; shippers for providing shipment hazard information; carriers for isolating and cleaning up the spilled radioactive materials; and Federal agencies for providing assistance to State and local governments. At the Federal level, the Federal

Emergency Management Agency (FEMA) coordinates such Federal assistance; the DOT and NRC provide assistance to FEMA; and the Department of Energy (DOE) maintains radiological assistance teams that respond to radiological emergencies when requested. ^{THE NRC BELIEVES THAT} It is not practicable nor necessary to require shippers to duplicate the immediate emergency response capabilities to respond to the scene of a transportation accident.

- (c) The ultimate determination of financial liability for damages resulting from transportation accidents is made by the courts. Under the Motor Carrier Act of 1980, as amended, the DOT adopted a rule requiring motor carriers to establish minimum financial requirements for matters such as cleanup after accidents.
- (d) The DOT requires shippers to provide descriptions of radioactive materials in each package. In the routing rule, the DOT requires additional driver training, including procedures to be followed in case of accidents.

~~The NRC concludes, as more fully discussed in the enclosed Federal Register Notice, that promulgation of a regulation in response to the petition would not serve the public interest because it would add regulations that unnecessarily duplicate existing requirements and practices. Therefore, your petition has been denied.~~
~~THE ISSUES RAISED BY YOUR PETITION HAVE BEEN CONSIDERED AND SUBSTANTIVELY RESOLVED AS DISCUSSED ABOVE.~~

Sincerely,

Samuel J. Chilk
Secretary of the Commission

Enclosure:
Federal Register Notice



NRC DENIES PETITION TO AMEND REGULATIONS ON
TRANSPORTATION OF NUCLEAR MATERIALS

The Nuclear Regulatory Commission has denied a petition ^{REQUESTING} asking that the
agency ^{TO} amend its regulations on the transportation of radioactive materials ^{ON THE BASIS}
¹ ^{ISSUES RAISED BY THE PETITIONERS HAVE BEEN SUBSTANTIALLY}
~~The Commission believes that the suggested changes would unnecessarily~~
~~RESOLVED BY SUBSEQUENT FEDERAL ACTION.~~
~~duplicate existing requirements and practices and that making NRC licensees~~
~~responsible for some of the proposed activities would not be practical or~~
~~necessary.~~

Critical Mass Energy Project, Rep. Theodore S. Weiss (New York), Rep.
Timothy E. Wirth (Colorado) and eleven citizen organizations from nine states
and the District of Columbia submitted the petition in November 1977, asking
that the NRC amend its regulations to impose four conditions on licensees.

The NRC noted that actions have been taken in the same four areas
mentioned by the petitioners, although the actions do not necessarily place
requirements on NRC licensees. The conditions sought by the petitioners and
related practices and requirements already in existence are:

(1) Special routes should be used for the transportation of radioactive
materials to ensure that the shipments avoid densely populated areas and
mountainous terrain.

(3) Licensees should be required to assume financial responsibility for any shipping accident that involves the dispersal of radioactive materials.

THE COMMISSION BELIEVES THAT THE LIABILITY FOR DAMAGES SHOULD BE DETERMINED BY THE COURTS CONSIDERING BOTH THE APPLICABLE STATE TORT LAW AND THE PARTICULAR CIRCUMSTANCES ASSOCIATED WITH THE ACCIDENT. ~~However, the financial liability for damages resulting from transportation accidents is determined by the courts.~~ Under the Motor Carrier Act of 1980, DOT published a rule requiring motor carriers to establish minimum financial requirements for matters such as cleanup after accidents. THE COMMISSION NOTES THAT

(4) A plan should be adopted to inform the drivers of vehicles about the nature of the material they are shipping and emergency actions they should undertake in case of an accident.

In response to this suggested change, the NRC noted that DOT requires shippers to provide descriptions of radioactive materials in each package. In its highway routing rule, DOT requires additional driver training, including procedures to be followed in case of accidents.

The eleven citizen organizations that submitted the petition jointly with the congressmen and Critical Mass Energy Project are California Citizen Action Group, based in Sacramento; Community Action Research Group, Ames, Iowa; Environmental Action of Colorado, based in Denver; Massachusetts Public Interest Research Group, Boston and Amherst; Michigan Public Interest Research Group, Lansing; National Intervenors, Incorporated, Washington, D.C.; New York Friends of the Earth, New York City; New York Public Interest Research Group, New York City; North Carolina Public Interest Research Group, Charlotte; Southwest Research and Information Center, Albuquerque, New Mexico; and Vermont Public Interest Research Group, Montpelier.

