



Department of Nuclear Engineering

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NRC PUBLIC DOCUMENT ROOM

MEMORANDUM

OBJECT NUMBER
PROPOSED RULE

PR-73 (44FR 34466)

TO: Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555
ATTN: Docketing and Service Branch

FR: J.O. Mingle
Professor of Nuclear Engineering
Kansas State University
Manhattan, KS 66506

DA: 24 July 1979

RE: Comments Concerning Proposed Changes to 10 C.F.R. § 73 Involving
Spent Nuclear Fuel Shipments.



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1. Congress in passing the Hazardous Materials Control Act, 49 U.S.C. § 1801, et seq., stated its declaration of policy as "to protect the Nation adequately against risks to life and property which are inherent in the transportation of hazardous materials in commerce." Id. § 1801. Radioactive materials are one of the included hazardous materials. Id. § 1803. The Nuclear Regulatory Commission would do well to utilize this Congressional declaration of policy. This policy uses the concept of risk which means the probability of an event is multiplied by the consequences of that event. A sabotage of spent fuel shipments could have a wide range of consequences, some of which might be severe; however, the total risk must involve the probability that this severe event will occur. I would suggest that this probability is too low to produce a magnitude of risk with which one needs to be concerned. In addition Congress used the word "adequately" rather than select the word "ultimately", implying that this Congressional policy expected a reasonable application of its concepts. The NRC approach, in contrast, appears to be to eliminate all risk associated with spent fuel. This is not only impossible but economically unsound.
2. The NRC's previous policy of exempting spent fuel shipments from the provisions of Part 73 has not caused any undue risk to the public. Therefore, the NRC should not change a proven regulation on the basis of unproven information, for the Commission is just starting a research program to verify the Sandia Laboratories study. 5 NRC News Releases, No.22, 2(1979). This crying of "wolf" with no substantiation to back it up is arbitrary and capricious and cannot be considered "credible regulation", a term proposed by the first NRC Chairman, William A. Anders. 1 NRC News Releases, No.19, 5(1975).

Acknowledged by cord... 7/27/79

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Memorandum, Secretary of the Commission, NRC, page 2, 7/24/79.

3. The timing of this action by the NRC gives the appearance of bureaucratic motivation in order to counteract the current Senate Bill 535, Nuclear Waste Transportation Safety Act of 1979, which would amend the Hazardous Materials Control Act and include "commercial spent fuel" under its umbrella. Is not spent fuel just hazardous material?
4. It would seem like a sound policy to consider a cost/benefit analysis of this regulation change. The cost to the nuclear industry, which will be born by the public in increased power costs, appears to be much in excess of any possible benefit. Similarly the consequences to the public of the sabotage of a unit coal train might be significant, but are "shotgun guards" riding the rails as the result of government regulations? Economics says no. This concept of ignoring cost v. benefit in the name of safety cannot be considered to be in the public interest. Safety regulations to be meaningful, and therefore not arbitrary, capricious, or an abuse of discretion, must be cost effective.

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