

**NEW YORK
STATE ENERGY OFFICE**

ROCKEFELLER PLAZA
ALBANY, NEW YORK 12223
JAMES L. LAROCCA, COMMISSIONER

Pray M-31

August 27, 1980

Mr. G. Wayne Kerr
Assistant Director for State
Agreement Programs
Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Wayne:

The cognizant New York State agencies have reviewed the prepublication draft of the proposed amendment to 10 CFR Part 71, which would establish specific requirements for advance notification to State governors of the transportation of nuclear waste to, through, or across State boundaries. In general, New York supports the proposed rule, but offers the following comments for your consideration:

- o The proposed definition of "Nuclear Waste", Paragraph 71.4(r), could present difficulties if, as has been known to happen, it is used outside the context of the proposed rule. The definition could lead to the misconception that radioactive material would only be considered radioactive waste if it exceeds Type A quantities. NRC should consider some appropriate modifications such as elimination of Paragraph 71.4(r) and the revision of Section 71.5a to state "No licensee shall transport any nuclear waste in excess of Type A quantities..."
- o Section 71.5b appears to apply the notification requirement only to shipments of nuclear waste which traverse state boundaries. This wording is not consistent with Section 71.5a, Paragraph 71.4(r) and Section 301 of Public Law 96-295 which refer to shipments of nuclear waste "to, through or across state boundaries". The reason for the variation is not clear and raises the question of whether the reporting requirement would apply to shipments which are strictly intrastate. New York sees no reason to exclude intrastate shipments from this action and does not believe such was the intent of Congress.
- o To add flexibility, New York recommends that Section 71.5b be modified to require notification "to the Governor of the State or his designated representative..." This would allow states to expedite the internal processing of such information.

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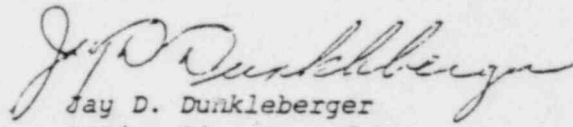
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- o If not in conflict with necessary safeguard provisions, NRC should consider extending the proposed requirements to all spent fuel shipments, or as an alternative, adopting comparable requirements for spent fuel shipments in 10CFR Part 73. This would provide consistent notification procedures for all nuclear waste shipments.

- o On page 3 of the draft notice the statement is made: "There are no quantity limits for radioactive material per se in Type B containers". This statement should be clarified since both the NRC and U.S. DOT regulations specify limits for Type B quantities of radioactive material.

New York appreciates being given the early opportunity to comment on this proposed rule.

Sincerely,



Jay D. Dunkleberger
Acting Director of
Nuclear Operations

cc: John P. Roberts