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March 12, 1981

Mr. Samuel J. Chilk
Secretary of the
Commission
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Re: Proposed Rule Regarding Protection
of Unclassified Safeguards Information

Dear Mr. Chilk:

On December 29, 1980, the Nuclear Regulatory Commission published in the Federal Register (45 Fed. Reg. 85459) a proposed rule relating to protection of unclassified safeguards information. The Commission invited interested persons to submit comments concerning the proposed amendment. In response thereto, we submit the following comments.

While we recognize the Congressional mandate to limit the type of information included as Safeguards Information, we believe that there is certain material not recognized by the proposed rule which is being developed by applicants and licensees which should be given this status. Information developed during the course of probabilistic risk assessments ("PRA") which identify specific components and systems, including the identification of their location, and assess the consequences of their failure, should be accorded protection under this proposed rule. While such information is submitted in response to safety or environmental requirements of the Commission, there could be a substantial adverse effect on security comparable to the release of other information accorded protection under the proposed rule should this information not be accorded protection under the rule. Of course, not all information associated with PRAs need be protected. However, detailed fault trees and similar analyses should fall under the category of Safeguards Information.

With regard to proposed 10 C.F.R. §2.744(e), the section should be rewritten to clarify that disclosure need only be made to attorneys and qualified experts of parties which have valid contentions and that if such disclosure is made there need not be disclosure to the parties themselves. We also believe that the Commission should create an exception to its Prairie Island rule where Safeguards Information is involved such that disclosure to parties or participants not having specific contentions or expertise is not required, and their rights of cross-examination and participation with regard to such issues should be severely limited. Furthermore, with regard to this subsection, the sanctions which may be imposed by a presiding officer should be specifically cross-referenced to proposed 10 C.F.R. §73.80 such as to clarify that parties or participants who seek to become involved in Safeguards Information issues are subject to the same penalties as are applicants and licensees for violation of the rules or orders of the presiding officer.

With regard to the definitions section, 10 C.F.R. §73.2(kk) (see also §73.21(i)), since attorneys for applicants and licensees often review security plans prior to the initiation of a proceeding, they should be specifically included in the class of recipients allowed access to safeguards information.

With regard to proposed 10 C.F.R. §73.2(mm), it is not clear how one would obtain the "judgment of the NRC" for approval of other repositories.

With regard to proposed 10 C.F.R. §73.21(d)(2), what would constitute a locked room or building should be clarified. With regard to subsection (g)(2) of the same section, a "messenger-courier" should be better defined. In addition, the regulation does not discuss the protection of security information which is in possession of one authorized to have such material when such individual travels, e.g., to meetings with the NRC.

With regard to proposed 10 C.F.R. §73.80, it is not clear why Section 147 of the Atomic Energy Act is not referenced.

With regard to proposed Appendix E to Part 73 Section E, portions of correspondence not only to the NRC but be-

tween the licensee or applicant and its contractors, agents or attorneys should be included in the list of items to be considered Safeguards Information.

Sincerely,

Mark J. Wetterhahn

MJW:sdd