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29 Sept. 2000

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attn: Rulemakings and Adjudications Staff

Re: Request for Comments on Issues Paper: Major Revisions in 10 CFR Part 71: Compatibility With ST-1—The IAEA Transportation Safety Standards—and Other Transportation Safety Issues, Issues Paper, and Notice of Public Meetings, 65 Fed. Reg. 44360 (July 17, 2000)

Dear Mr. Secretary:

These comments are submitted on behalf of the New Mexico Attorney General's Office in response to the Commission's notice of proposed rulemaking and issues paper, published in the Federal Register on July 17, 2000, concerning possible revisions in 10 CFR Part 71.

The New Mexico Attorney General's Office has actively participated in regulatory and judicial proceedings concerning the Waste Isolation Pilot Plant ("WIPP") since the early 1980's. Such proceedings include NEPA processes, application of the Federal Land Policy and Management Act by the Department of the Interior, development and application of Radioactive Waste Disposal Regulations by the EPA, and issuance of a permit under the New Mexico Hazardous Waste Act. Such participation has reflected both the intense public interest in the operations of WIPP and the serious environmental and public safety issues implicated in the operation of this radioactive waste repository.

Against this background we are seriously concerned by the Commission's announcement that it is considering the elimination of the requirement for double containment of plutonium shipments in excess of 20 curies. The commitment by the Department of Energy ("DOE") to use double-containment shipping packages for shipment of wastes to WIPP was made early in the life of the WIPP program, based on strongly voiced objections by the public and various institutions to the use of single-containment packages. This commitment, fundamental to the design of the TRUPACT-II shipping package and the RH-72B shipping cask, which have been certified by this Commission, the HALFPACT, which this Commission is considering, and the TRUPACT-III, that DOE is developing, has been a cornerstone of the WIPP program. It is

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largely responsible for the level of public acceptance of shipments to WIPP, both in New Mexico and in other states along the waste shipping routes. If the DOE were to renounce its commitment to use double-containment shipping containers, the State of New Mexico's Attorney General's Office would view this as a direct contradiction of the commitments continually made to ensure safe shipping of this material. Since the proposed revision in 10 CFR Part 71 seems to pave the way for such action by DOE, we strongly oppose such revision.

As early as 1983 the independent Environmental Evaluation Group ("EEG") reported that (a) planned waste shipments to WIPP might contain explosive mixtures of hydrogen, oxygen, and methane, (b) up to one percent of the weight of a contact-handled TRU waste shipment might be in respirable particles smaller than 10 microns, and (c) the planned TRUPACT single-containment package might be unable to prevent releases of plutonium under both normal and accident conditions. Neill and Channell, Potential Problems from Shipment of High-Curie Content Contact-Handled Transuranic (CH-TRU) Waste to WIPP, EEG-24, Aug. 1983, at 17-18. EEG expressed doubts that the then-current TRUPACT design would comply with NRC regulations calling for double containment of plutonium shipments in excess of 20 curies. (id.).

In 1986 EEG issued a more detailed report, Channell et al., Adequacy of TRUPACT-I Design for Transporting Contact-Handled Transuranic Wastes to WIPP, EEG-33, July 1986. EEG-33 pointed out that shipments would contain up to one-percent respirable fines, average 25% combustible material, and generate potentially flammable or explosive concentrations of hydrogen gas and "should not be considered either nonrespirable or stable." (at iv). EEG therefore opposed use of a vented container and supported use of a sealed double containment package. (id. v-vi).

EEG demonstrated in EEG-33 that "double containment would reduce the expected quantity of radionuclides released from accidents to 28% of that with the current design. Also the doubly contained design would limit the curies released in the class VIII accident to 40% of that with the current design." (EEG-33 at 27). Similar reductions were shown in radiation doses and in environmental contamination and cleanup costs. (id. 28-32). EEG summarized:

"The principal advantage to double containment is in drastically reducing the latent cancer fatalities (LCF) that would occur if a Severity Category VII or VIII accident were to occur. For example, an average Savannah River Plant (SRP) shipment involved in a Category VIII accident would result in about 20 LCF with the current design and only about 8 LCF with double containment. Also, with single containment the maximum individual dose from a Category VIII accident involving the maximum proposed load could lead to early acute health effects.

"Another advantage in double containment is the drastic decrease (from 12 to 0.02) in the expected number of radionuclide release accidents. All release accidents incur significant monitoring costs and the larger releases can cost millions of dollars for decontamination and waste disposal. Also, any release accident will cause an increase in public perception of transportation accident risks, even if there are no significant public doses received." (id. 91)

In mid-1986, DOE abandoned the TRUPACT-I package and committed to use a double-containment sealed package, now named the TRUPACT-II. (EEG-33 at 2). Since that time the need for double containment has become more acute. DOE has revised the WIPP Waste Acceptance Criteria to delete the one-percent limitation on respirable fines; now there is no limitation. See Waste Acceptance Criteria for the Waste Isolation Pilot Plant, DOE/WIPP-069 Rev. 7.0, Nov. 4, 1999, at 3-15, 3-16. Thus, a shipment may contain a substantial quantity of respirable matter, which may be radioactive. Moreover, the Pu239-equivalent curie (PE-CI) limit for each shipment has been raised to 1100 PE-CI, and 1800 PE-CI for certain waste forms. (id. 3-14, 3-15).

In this situation, the case for double containment was conclusively made in the 1980s and has become stronger, not weaker, since. No scientific or technical case has been presented for eliminating the double containment requirement for shipments to WIPP. Whatever arguments may relate to packaging of items that will retain their integrity in accident conditions, such arguments have no application to shipments of unstable and respirable materials, such as the waste destined to WIPP.

In sum, this office requests that the Commission not begin to consider revising or eliminating the § 71.63 requirement that plutonium shipments in excess of 20 curies be made in a double containment package.

Very truly yours,

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Assistant Attorney General

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