

COMMISSIONER DIAZ'S COMMENTS ON SECY-00-0070 "CONTROL OF SOLID MATERIALS: RESULTS OF PUBLIC MEETINGS, STATUS OF TECHNICAL ANALYSES, AND RECOMMENDATIONS FOR PROCEEDING"

I approve the staff continuing to develop the information base necessary to evaluate the control of solid materials and staying informed of international initiatives in this area. This information is necessary for the Commission to make a fully informed decision on how to continue to ensure adequate protection of public health and safety in regulating the control of solid materials.

In this regard, I believe that the most pressing technical issue that needs to be addressed is the measurement of radioactive doses and its application to the protection of public health and safety. Measurability, not detectability, is the fundamental health issue. Measurability, in all its forms, is central to the radiological protection mission of the Commission. The policy question for the NRC and the nation is how the measurement of radioactive dose is utilized for the purpose of regulation in the public interest. It cannot be focused on accepting very low detectability standards of a particular type of radioactive material, i.e., AEC material. This issue is a national and international issue that deserves a comprehensive and holistic solution.

I agree with the staff's conclusion that "[T]he diversity of public views expressed on this issue, as well as the various actions being explored by private and public organizations, underscore the need to develop a national standard to provide a clear and uniform approach to the control of solid materials." In addition, as I stated during the May 9, 2000, Commission meeting with stakeholders, I believe that, without a national standard, licensees will continue to release solid materials using de facto standards. De facto standards will continue to be defined by the sensitivity of radioactivity detection equipment and arbitrary decisions on "alarms." Allowing this practice to continue would perpetuate the application of undefined standards and inconsistencies in radiological protection practices.

I note that the representative from the Metals Industry Recycling Coalition (MIRC) stated that each industry uses a detectability standard for accepting recycled materials. He also stated that the equipment would not normally detect alpha or beta radiation and the "alarm" is dependent on above background detection, with background itself a variable. I fully understand the commercial concerns of the recycling industry, and I believe the Commission needs to be responsive to these concerns. However, this cannot be used as a reason to delay or not have a radiation standard.

I believe that the levels of radioactive material being released under these industrial-use standards are protective of public health and safety. However, I also believe that we must ensure consistent application of standards that protect the public's health and safety, without imposing unnecessary regulatory burden. Therefore, I must disapprove the staff's recommendation to defer a final decision on whether to proceed with rulemaking at this time. Instead, the staff should provide the Commission a rulemaking plan for establishing a national standard.

The Commission must move forward and establish regulations for the continued control and, where appropriate, release of solid materials in order to ensure the consistent application of safety standards. We should not continue to allow the inconsistent application of de facto standards. I believe that the most credible and established manner to address this issue is for the Commission to use the rulemaking process. This process not only allows, but requires, solicitation, evaluation, and consideration of stakeholders' views, concerns, suggestions, and recommendations. It also allows complete and open evaluation of all risks, including actual and perceived risks, impacts on health, safety, and the environment, and economic considerations of affected entities. I believe that initiation of the rulemaking process will allow the information already provided in response to the issues paper and expressed during the May 9, 2000, meeting to be adequately addressed.

Based on comments that NRC has received on this issue, I believe it is necessary to point out that a decision to initiate rulemaking does not mean that the Commission has made a final decision on the final scope or details of a regulation, or criteria to be included in such a regulation. The rulemaking process is designed to gather, evaluate, and consider relevant information in order to develop and establish necessary criteria and requirements. I must also point out that many times information obtained as a result of the rulemaking process has changed, sometimes significantly, the final criteria of a regulation. Therefore, a decision to initiate rulemaking in no way predetermines the outcome. In fact, it ensures just the opposite.

I agree that the staff should move forward in requesting that the National Academy of Sciences (NAS) conduct a study and provide recommendations on possible alternatives for release of slightly contaminated materials. However, the issue of measurability should be given the highest priority during development of the information base and should not be deferred to NAS. The NAS study should be conducted in parallel to the rulemaking so as not to detract from the Commission's ongoing efforts. It should be clear that the results of the NAS study, as well as other relevant information, will be fully taken into consideration by the Commission during the process of rulemaking. The rulemaking plan should address how the NAS study will be integrated into the rulemaking process.