



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CHAIRMAN

May 5, 2004

The Honorable Janet Napolitano
Governor of Arizona
Phoenix, Arizona 85007

Dear Governor Napolitano:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated March 11, 2004, in which you requested reconsideration of the Commission's decision to remove the packaging requirement for double containment for the shipment of certain forms of plutonium. The Commission removed the double containment requirement in the final rule amending Title 10 of the Code of Federal Regulations Part 71 (Part 71), "Compatibility with International Atomic Energy Agency Transportation Safety Standards (TS-R-1) and Other Transportation Safety Amendments" (69 Federal Register 3698; January 26, 2004). As presented in more detail below, the Commission believes that it acted appropriately in this matter to maintain reasonable assurance of adequate protection of public health and safety and the environment.

NRC's decision to eliminate the double containment packaging requirement was part of a rulemaking action, rather than a packaging certification action. Although the final NRC rule will permit DOE to consider an alternate Type B package without double containment for the shipments to WIPP, nothing in our rule preempts or precludes any arrangements between States and DOE with respect to particular shipment campaigns. The NRC decision does not invalidate the existing TRUPACT-II design, which still meets all remaining applicable requirements of Part 71. Thus, DOE could continue to use the TRUPACT-II to ship transuranic waste to WIPP. Moreover, DOE cannot change the design of the TRUPACT-II to remove the double containment without demonstrating that it is safe, and only with NRC review and approval of the design change. I would like to clarify that the double containment criteria do not require that each container be independently qualified as a Type B transportation container. For example, the double containment aspect of the TRUPACT-II design is achieved by the use of a thin-walled steel container placed within a thick-walled outer package that together form a single unit evaluated against Part 71. The significance of this design is that the inner container itself is not approved as a stand-alone transportation package.

Part 71 sets forth safety performance requirements for transport package design and use to ensure safe transport of their hazardous contents under both routine and accident conditions, but not sabotage conditions. Type B packaging standards, including packages for plutonium shipments, must provide reasonable assurance that public health and safety and the environment are protected during the transportation of radioactive material. Although NRC's Part 71 rulemaking focused on bringing NRC's regulations into alignment with the 1996 transportation safety standards of the International Atomic Energy Agency (IAEA), NRC also reviewed the Part 71 rules for possible improvements. As part of the final rule, risk-informed modifications were made to address shipping requirements for certain forms of plutonium.

We share your interest in ensuring radioactive material security while in transport. Since September 11, 2001, the Commission has issued multiple guidance documents and additional security requirements to the NRC licensees transporting radioactive materials. These guidance documents and additional security requirements have been tailored to the specific material being shipped and the risks associated with that material. Additionally, the NRC has performed vulnerability assessments on transportation packages for certain types of radioactive materials. We are also aware that the U.S. Department of Energy (DOE) has performed its own assessments of the risks associated with transportation of radioactive materials. With respect to shipments to the Waste Isolation Pilot Plant (WIPP), DOE is responsible for assuring or providing the security associated with such shipments, including potential sabotage. The NRC's role in shipments to WIPP is to approve, after they are found to be safe, the designs of packages used to transport the radioactive material to that facility.

We regret the impression that the removal of the double containment requirement may reduce public confidence. The NRC reviewed the petition that was submitted to eliminate double containment in the context of safety. In this review, NRC staff considered comments received from three publications in the Federal Register on this issue and six public meetings held across the country. The NRC staff also reviewed the available regulatory history for double containment. We believe the Commission has kept the public involved and informed of our actions on this rule and the reasons for our action.

With regard to the Environmental Evaluation Group's (EEG's) July 26, 2002 comments, it is true that, due to an administrative error, our original rulemaking package did not discuss the comments. As soon as the oversight was identified, staff performed a review and concluded that the EEG comments did not raise any new issues. The staff developed responses to the EEG comments that were communicated to the Commission before the final rule was issued. The Federal Register Notice reflected consideration of the EEG comments. Additional details on the disposition of the EEG comments are provided in the enclosed letter from M. Virgilio to M. Silva, dated March 1, 2004. Furthermore, on April 8, 2004, EEG provided us with another letter setting forth five concerns regarding the double containment issue. Currently, our staff is preparing a response to that letter, and we will provide it to EEG in the near future.

In a related matter, the NRC has recently received and docketed an application from Packaging Technology, Inc., on behalf of the Department of Energy (DOE), for approval of the TRUPACT-III transportation package design. The application requests approval of TRUPACT-III based on finite element computer modeling and a series of half-scale drop (impact) tests. Depending on the quality and completeness of the application, the NRC staff anticipates that its review of the TRUPACT-III design will take approximately 12 months. The application is publicly available under NRC docket number 71-9305. The results of the NRC's evaluation will also be made publicly available, and meetings with the applicant during the review process will be formally announced and open to the public.

A member of the NRC staff, Mr. Earl Easton, Senior Level Specialist for Transportation, attended the Western Governors' Association meeting in San Diego, California, on April 28-29, 2004. Mr. Easton provided a presentation on the double containment issue, and he would be pleased to discuss the matter further with any of your representatives. Mr. Easton can be contacted at 301-415-8520.

Finally, I want to assure you that the Commission shares your long-standing interest in the safety of transuranic waste shipments to the Waste Isolation Pilot Plant (WIPP). NRC has been actively involved in the approval of transportation packages used to ship transuranic waste to WIPP, such as the TRUPACT-II, since 1988, and stands fully prepared to meet its future commitments under the WIPP Land Withdrawal Act (Public Law 102-579) regarding the approval of transportation packages for WIPP shipments.

Sincerely,

/RA/

Nils J. Diaz

Enclosure: As stated



Identical letter sent to:

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The Honorable Arnold Schwarzenegger
Governor of California
Sacramento, California 95814

The Honorable Kenny C. Guinn
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The Honorable Bill Richardson
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