

From: Jim Lieberman <jxlrc@comcast.net>
To: <lsk@nrc.gov>
Date: 11/18/05 11:38AM
Subject: Comment on Expanded Rulemaking for 351(e)

Leslie

I appreciated the opportunity that NRC provided on November 9, 2005 for public comment in advance of its rulemaking to meet the requirements of section 651(e) of the Energy Policy Act.

An important issue discussed during the meeting is the entry point for NRC jurisdiction for accelerated produced material. In interpreting the Energy Policy Act, NRC may have a choice of options. Option 1 is to take a narrow conservative view which would provide for jurisdiction once an intended target is made radioactive. Option 2 is to take a broader view that would include both the intended target as well as incidental material that had been irradiated by the accelerator and made radioactive. Option 2 does not directly regulate the operation of the accelerator, though to limit exposures to workers or the public it might indirectly regulate accelerators.

I appreciate that there maybe policy and legal issues associated with adoption of Option 2. However, in my view, Option 2 is consistent with providing protection of the public health and safety as NRC would protect those who receive radiation directly from the accelerator and those who might be exposed from any material made radioactive from the accelerator. It would also address the regulatory gap produced (or continued) by Option 1 in those states that do not actively regulate the radiation aspects of accelerator activity. It would also ensure appropriate disposal of radioactive material including the irradiated steel and concrete associated with the accelerator. NRC has to resolve the legal issue of whether the language in section 651(e) allows for a broader view than option 1.

Recognizing the time it will take to sort out the policy and legal issues and the short time allowed for this rulemaking, I respectfully suggest that the proposed rule be structured to provide the NRC with flexibility to continue to consider this issue during the rulemaking. Specifically, I propose that the proposed rule be written broadly to cover the irradiation of both intended material and incidental material. The Statement of Considerations could specifically invite comments on this issue and point out that the final rule may limit jurisdiction to the intended target. This will ensure that adequate notice is provided and avoid the need for re-noticing if the narrow approach is eventually taken. This approach will allow the agency decision makers to be informed by views from the states and public. This is particularly important in this rulemaking because of the extensive regulation in this area that exists in some states.

If you have any questions on this approach, please contact me.

Jim Lieberman

Regulatory and Nuclear Consultant

Home: 301-299-2294

Office: 301-299-3607

Cell: 301-526-4790

e-mail: jxlrc@comcast.net

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