

Congress of the United States
Washington, DC 20515

March 19, 2009

The Honorable Dale E. Klein
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Klein:

We write to you with great concern regarding the Commission's recent action to classify depleted uranium as Class A waste. This decision has been taken in apparent disregard for the fact that depleted uranium poses a risk to health and safety that is greater than other Class A wastes, and, as disturbingly, may undermine long-held policies related to the disposal of radioactive materials.

Through the Atomic Energy Act of 1954 and the Low-Level Radioactive Waste Policy Act and its Amendments, Congress required the Commission to establish clear and effective criteria for the classification of radioactive waste. The fundamental purpose of creating distinct waste classes is to acknowledge that different materials pose different risks to health and safety, and that therefore different materials require different long-term disposal methods. Classification is predicated upon an analysis of both the hazard posed by a given material, and the steps required to dispose of it in a safe and secure manner. Class A waste is meant to be the lowest classification, meaning that the material poses the least threat to health and safety and may be most easily disposed.

While the Commission did not categorize depleted uranium into a specific waste class in the early 1980s during its rule making process, it considered doing so. In fact, the Draft Environmental Impact Statement (DEIS) for 10 CFR 61 established that only depleted uranium below the concentration of $0.05 \mu\text{Ci}/\text{cm}^3$ could be considered Class A. This was removed from the final rule because there was no depleted uranium waste stream in existence, leaving any potential stream of the material in a regulatory limbo. The depleted uranium waste stream which will flow from commercial uranium enrichment facilities is expected to be $0.5 \mu\text{Ci}/\text{cm}^3$, that is, ten times greater than what the Commission believed was safe when the DEIS was written.

The requirements for safe and secure disposal of depleted uranium are much greater than what is required for Class A waste. In fact, the Commission's technical analysis shows that the safe dispose of depleted uranium will require increased waste disposal depth and radon barriers. These requirements are most similar to those common for Class C waste, not Class A.

This arbitrary and capricious mischaracterization of depleted uranium as Class A waste will undermine public confidence in the waste classification system, may increase risks to public health and safety, and raises the possibility that additional, uncharacterized and possibly even more dangerous materials could be similarly treated in the future.

On March 10, 2009, we sent a number of questions to the Commission regarding low-level radioactive waste. Included in that query were questions regarding the classification of depleted uranium. To date, the Commission has neither answered nor responded to these questions. In light of this fact, we respectfully request expedited answers to those questions, and additionally ask you to provide the Energy and Commerce Committee Subcommittee on Energy and the Environment with answers to the following questions:

1. The Draft Environmental Impact Statement for 10 CFR 61 proposed that only depleted uranium below the concentration of $0.05 \mu\text{Ci}/\text{cm}^3$ could be considered Class A. Why should depleted uranium at ten times this concentration be treated as Class A waste?
2. What disposal procedures have been required for depleted uranium? Are these different in any way from the disposal procedures commonly required for Class A waste? Are these procedures similar in any way to the disposal procedures commonly required for Class C waste?
3. Could uranium tailings be considered Class A under the actions taken by the Commission?
4. Could any other materials be classified as Class A under the action taken by the Commission?

In addition, we also request that within 10 business days, or no later than close of business, April 2, 2009, please provide the Subcommittee with copies of all records (including but not limited to written and electronic communications, phone calls logs or notes, meeting notes or minutes, memoranda, and analyses) relating to the Commission's decision to allow depleted uranium or other materials not currently classified as Class A to be considered as Class A waste, including internal Commission records, all records involving EnergySolutions, Inc., and records involving the Department of Energy.

The Commission's action to classify depleted uranium as Class A even though it poses more severe risks to health and safety, and requires much greater effort for disposal, seems to be unsupportable and inconsistent with the intent of the law. The Subcommittee intends to carefully review the basis for this action.

The Subcommittee looks forward to your prompt response to these questions, and to receipt of the requested information.

Sincerely,



Edward J. Markey
Chairman
Subcommittee on
Energy and the Environment



Jim Matheson
Member
Subcommittee on
Energy and the Environment