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December 22, 1999

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Paper,
Allied-Industrial,
Chemical &
Energy Workers
International
Union
AFL-CIO, CLC

Honorable Richard Meserve
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Re: Release of Solid Materials at
Licensed Facilities*

Boyd Young
International President

Robert Wages
Executive Vice-President

James H. Dunn
Treasurer

R.J. Christie
Secretary

Dear Chairman Meserve:

Pursuant to the *Federal Register* "request for comment" of June 30, 1999, at page 35090, and regarding "Release of Solid Materials at Licensed Facilities; Issues Paper, Scoping Process for Environmental Issues, and Notice of Public Meetings," I enclose for Commission consideration one copy of **Further Comments of the Paper, Allied-Industrial, Chemical & Energy Workers Union, ("PACE"), and Request for Withdrawal of NUREG-1640, Public Disclosure of Information on Taint and Defects, and Alteration of Dates For Comments on NUREG-1640 Accordingly.**

The enclosed Comments request, among other things, an alteration of the time period in which to file Comments regarding NUREG-1640 ("Radiological Assessments for Clearance of Equipment and Materials From Nuclear Facilities.") It is respectfully requested that this request be given timely attention by the Commission.

Please put the enclosed Comments in the public file for the proceeding. If there are any questions regarding this matter, please contact Dan Guttman at 202-638-6050 or Richard Miller at 202-466-0900.

Very truly yours,

James K. Phillips (by DM)

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PDC NUREG 1640

Further Comments of the Paper, Allied-Industrial, Chemical & Energy Workers Union, ("PACE"), and Request for Withdrawal of NUREG-1640, Public Disclosure of Information on Taint and Defects, and Alteration of Dates For Comments on NUREG-1640 Accordingly

December 22, 1999

U.S. Nuclear Regulatory Commission

Proceeding on Release of Solid Materials At Licensed Facilities

BACKGROUND

The Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO ("PACE") has long been the primary representative of the hourly workers at the United States Government's nuclear weapons complex sites. Its members also work in steel facilities, machining operations, metal working plants and other workplace settings where radioactive metals can be smelted, cast, ground, machined, plated, welded or otherwise processed. PACE therefore has a long and continuing interest in the understanding of the risks posed by exposure to radioactive materials and the protection of the public, including PACE members, their families, and the communities in which they live and work, from these risks.

PACE has previously filed comments in this proceeding on November 1, 1999 and November 16, 1999. In addition, PACE participated in the Commission proceedings in Rockville, Maryland in November, 1999 and Chicago, Illinois, in December, 1999.

The Commission has stated that Comments on NUREG-1640 ("Radiological Assessments for Clearance of Equipment and Materials from Nuclear Facilities") must be filed with the Commission by December 22, 1999. Because, at this latest of dates, the Commission still has not disclosed information essential to meaningful comment on NUREG-1640, this cut-off date is inappropriate, and further opportunity for comment is in order. In any event, it is now apparent that NUREG-1640 is irretrievably tainted and deficient. PACE therefore requests that: (1) the Commission withdraw NUREG-1640; and (2) the Commission provide the public with the further data and information needed to understand the taint and deficiencies in NUREG-1640; and (3) the Commission provide the public with ninety days from the provision of this information for the opportunity to provide further comment on the extent to which what is known about the NUREG-1640 must be addressed prior to any further Commission action here.

For further information regarding these comments please contact Dan Guttman at 202-638-6050 or Richard Miller at 202-466-0900.

I. The Commission Must Provide Full Public Disclosure of the Taint and Further Deficiencies Underlying the Development of NUREG-1640

At the November 1, 1999 public meeting, a number of environmental and public interest groups explained that they could not participate further in this proceeding because of the evidence that the Commission has prejudged the outcome. At that time, PACE noted that there was substantial evidence that this was the case, but that, given the representations of the NRC staff that the Commission has an open mind (notwithstanding the plain evidence to the contrary) PACE would not then itself make a conclusive judgments about the *bona fides* of this proceeding. In the interim since November 1, however, the Commission has failed to do that which is necessary to demonstrate the *bona fides* of the proceeding and, in particular, the *bona fides* of the NUREG -1640 document and the means by which it was developed.

1. The Commission Must Fully and Publicly Disclose All Information Relevant to the Taint Underlying NUREG-1640

At the November 1-2, 1999 Rockville, Maryland "public participation" meeting in the above proceeding, it developed that:

- * the NRC is relying on a private contractor called Science Applications International Corporation ("SAIC") to prepare the technical basis ("NUREG - 1640") for the rules to be set here;
- * the NRC has not publicly disclosed, and could not disclose at the meeting, relevant interests possessed by SAIC and its clients in the outcome here;
- * the NRC was therefore not able to comment on the fact that SAIC has been working with or for further entities with substantial interests in this Commission's determinations here. In particular, in mid-1996 SAIC -- contemporaneous with SAIC's contractual commitment to the NRC to "submit" to the NRC the "draft" and "final" "issues paper" and "regulatory options paper" -- teamed with British Nuclear Fuels ("BNFL") in successful pursuit of a quarter billion dollar Department of Energy contract predicated on the BNFL/SAIC team's ability to recycle and release for commerce unprecedented amounts of radioactive metals. SAIC 1996 documentation shows that SAIC expected its share of the BNFL project to be \$30 million.
- * the NRC staff was unable to comment on what SAIC disclosed to the NRC, pursuant to its obligation to make continuing disclosures, and what the NRC did to assure compliance with conflict of interest laws and policies.

NRC staff promised that the NRC General Counsel will review the conflict of interest involved in the use of SAIC, and solicited public comments in aid of this review.

PACE understands that by letter to SAIC of December 16, 1999 NRC issued a stop work order to SAIC regarding the August, 1999 contract. However, as of December 22, 1999: (1) the public has not been apprized of the full range of conflicting interests possessed by SAIC; (2) the public has not been apprized of the time and manner in which the Commission was informed of

these interests; (3) the public has not been apprized of the reasons for the failure of the Commission to protect the public (and the millions of taxpayer dollars spent on SAIC) against conflict of interest; and (4) the public, as discussed next, has not been provided with the substantial disclosures needed to begin to understand the measure of damage done by reliance on a tainted contractor.

2. The Commission Must Provide the Public with All SAIC Workproduct In Order to Permit Judgment of the Degree to Which the Taint on NUREG-1640 Will Infect any Further Commission Action Here

In its November 16, 1999 Comments on the SAIC matter, PACE explained that the strength and longevity of the conflict of interest here requires public disclosure of all materials (including drafts, workpapers, and deliverables) prepared by SAIC under its NUREG contracts. In fact, as PACE pointed out, notwithstanding NRC policy that contracts are public documents, the NRC public document room did not even contain complete copies of the SAIC contracts.

PACE's Comments pointed out that the need for full disclosure of SAIC workproduct is punctuated because the letter of the SAIC contracts assign a *de facto* decisional role to SAIC (thereby rendering any NRC claim of oversight suspect). PACE's November 16 Comments explained:

If the terms of the public portions of the SAIC contract are credited, SAIC and not the Commission, is the source of the proposed rule here. The "delivery schedule" under the November, 1996 amendment (one of over a dozen amendments) included, in part:

- November 22, 1996 Submit outline for draft issues paper
- March 8, 1997 Submit draft issues paper
- April 22, 1997 Submit resolution of comments and revised draft issues paper
- May 22, 1997 Submit final issues paper
- June 8, 1997 Submit draft regulatory options paper
- September 30, 1997 Submit final regulatory options paper

In short, SAIC's drafting and finalization of the Commission's options, and its resolution of the public's views are decisional activities. As PACE's November 16 Comments elaborated, the performance of these activities by a private company violates the longstanding prohibition against the use of private contractors to perform inherently governmental functions.

Moreover, as NRC staff itself agreed at the December 7, 1999 public hearing, the NUREG document is complex and rife with implicit value judgments. In many cases the critical value judgments may only be understood upon review of underlying workpapers, which show, for example, the range of options considered and the rationale for rejecting some analytical paths and following others.

At the December 7 meeting, NRC staff stated that action was being taken to place information produced by SAIC under the contracts in the public document room. However, a December 20, 1999 telephonic inquiry to the public document room staff confirmed that such information has not been delivered for public review -- and was not likely to be delivered prior to the December 22, 1999 deadline for filing these comments.

PACE's December 21 visit to the public document room confirmed that, as of that date, the Commission had not even placed a copy of the full 1992 contract in the public files. PACE's November 16, 1999 comments on the SAIC matter pointed out that:

Most notably, the public document room copy [of the 1992 SAIC contract: NRC-04-92-037] incorporates by reference -- but does not include -- "SAIC's technical proposal." PACE has, to no avail, called this deficiency to the attention of the General Counsel's office and the Public Liaison for this proceeding, and again requests that complete public copies of the contracts be made available immediately.

As of December 21, the SAIC technical proposal was still missing from the public contract room copy of the contract.

Nonetheless, the Statement of Work for the 1992 SAIC contract -- placed in the public file on December 15 -- reveals that SAIC's role since at least 1992 has been so profound and longstanding as to raise questions about the Commission's ability to think for itself. ¹ In sum, the

¹ See "Section C" (Statement of Work) to 1992 Contract, which PACE respectfully requests the Commission to incorporate in the record here. Among other items, the Statement called on SAIC to:

1. Tell this Commission -- presumably the fount of expert authority in its own right -- about: (1) "the current and expected future state of the U.S. recycle industry"; (2) "the quantities of potentially recyclable or reusable material in the U.S. nuclear industry"; (3) "existing or proposed recycle exemption policies in other countries"; (4) "programs and policies related to recycle to date developed by other U.S. Federal agencies":

withdrawal of NUREG-1640 would still require public disclosure and comment to assure that the SAIC role does not taint future developments as well as past ones.

3. The August, 1999 SAIC Contract's Prejudgement of the Outcome Here Requires Public Explanation and Cure

SAIC contract NRC-04--99-046, effective August 4, 1999 is entitled, "Technical Assistance Support for Clearance of Materials and Equipment." The statement of work begins by explaining that, notwithstanding the \$2.5 million dollars previously provided to SAIC (an amount double that initially deemed needed) to provide the "technical basis" for the rulemaking, SAIC failed to complete its job:

The technical basis for conducting a rulemaking on clearance is incomplete, and this statement of work is designed to provide technical assistance for the remaining technical information on collective doses and some related costs as required by the Commission for their consideration of regulatory alternatives in the matter of clearance.

The statement of work then declares that the predicate for SAIC's continuing work is the NRC's June 30, 1998 Staff Requirements Memorandum. The statement of work explains (at 1):

The Commission in an Staff requirements Memorandum (SRM) dated June 30, 1998 directed the NRC staff to proceed with rulemaking on clearance of materials and equipment having residual radioactivity. Specific directions regarding the content of a clearance rule contained in SRM are that: (1) it will not be a detectability standard but will instead be a dose-based regulation...(2) it will base standards on realistic scenarios of health effects from low doses; and (3) it will be a comprehensive rule applicable to all metals, equipment, and materials, including

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2. Develop "pathway models and [the] technical basis upon which to base NRC regulations";
 3. Prepare "an options paper outlining regulatory approach";
 4. Provide "assistance in preparation of a rulemaking package, including a GEIS, a Regulatory Analysis, and amended rules;" and
 5. Provide "assistance in preparation of implementing regulatory guidance."

soil, unless a narrower scope is justified based on problems with applying the rule to certain categories of materials that could delay completing the rulemaking.

At the November 1 public meeting, PACE and many other stakeholders pointed out that a proceeding based on the June 30, 1998 memorandum constitutes the impermissible prejudgment of the outcome. (In particular, predetermination that there will be standards, and that they will be based "dose" and not "detectability" based. See, by contrast, public recognition that a standard must be based on detectability, as expressed in Attachment A, an editorial from the Springfield, Massachusetts *Union News*). The NRC staff, and facilitators, provided assurances that the Memorandum no longer governed, and that the NRC was openminded. The terms of the August, 1999 SAIC statement of work (which remained unmodified in the copy provided by the NRC public document room on December 21) belie these November 1 proclamations. The Commission must explain why its inability to act with an open mind in this proceeding is not conclusively demonstrated by its own (in)action on the terms of the August, 1999 contract.

4. The Commission Must Correct the Failure of NUREG-1640 to Consider the Primary Source of Radioactive Waste -- the U.S. Department of Energy

Throughout the November and December, 1999 public participation proceedings, PACE (and other public representatives) pointed out the obvious -- no rule regarding the release of radioactive waste can be meaningful without full consideration of the waste generated by the United States Department of Energy's ("DOE") nuclear weapons complex.

It is now evident beyond peradventure that facts relating to DOE have not been considered at all (at least in any legitimate manner) in the NUREG drafting process.

First, NUREG-1640 acknowledges the essential importance of considering real world conditions and admittedly does not consider the Department of Energy's radioactive waste handling and contracting. NUREG-1640 states, at xvii (emphasis in original):

The purpose of this report is to calculate realistic estimates of the dose factors for the average member of the critical group associated with the clearance of equipment and of scrap iron and steel, copper, aluminum and concrete on a radionuclide-by-radionuclide basis.

* "Realistic" estimates are estimate using scenarios and models whose parameters are based on general practices of the U.S. nuclear power industry.

Thus, as just quoted, the NUREG document does not even purport to address the

"general practices" of the DOE (and DOE contractors). As was explained by knowledgeable participants at the November hearings, DOE has upwards of one million tons of contaminated metals. Moreover, as was declared by a DOE representative at the December hearing, DOE fully intends to release them into commerce.

The historic and continuing poor track record of the DOE and DOE contractors in managing contractors and dealing with environmental matters requires thorough scrutiny. (See PACE November and December written and oral comments). Based on the increasingly well-established public record, any NRC effort to set a standard for the release of DOE metals will be arbitrary -- for there can be no presumption that the standard will be honored by DOE and its contractors. Indeed, the evidence requires a presumption to the contrary. In its November 1 Comments, therefore, PACE identified information about DOE historic and current practices that must be addressed. NRC, however, has been totally non-responsive to PACE's requests to provide for factfinding and analysis.

To the contrary, at the public meetings NRC staff made perfectly plain that NRC Staff does not have the factual knowledge base regarding DOE needed to make up for the admitted deficiencies in NUREG. Remarkably, Staff initially appeared to take the position that the "general practices" of the DOE are irrelevant to this proceeding because the NRC lacks jurisdiction over DOE facilities. This claim is unfortunate and inappropriate.

First, DOE has directed BNFL (through its wholly owned subsidiary MSC) to obtain the authority of an NRC license (issued by an Agreement State) to put into unrestricted commercial use large quantities of radioactive waste metals. Thus, DOE contracting practices provide for the free release of radioactive metals through NRC agreement state(s) licensed facilities.² Second, under DOE's "privatization initiative" certain DOE facilities are now being subjected to NRC regulation, thereby opening the door for these licensees to release materials. Third, as was confirmed by a DOE spokesperson at the December NRC hearing, even if this Commission were not directly responsible for the release of DOE waste, the DOE intends to follow the lead of this Commission in standard setting.

The NUREG's failure to expressly consider the reality of DOE waste is particularly troubling given the conflict of interest possessed by SAIC. SAIC, as explained in PACE's November 16, 1999 Comments, has a multimillion dollar self-interest in keeping the troubling and unlawful practices of DOE recycling out of the sunshine.

In short, until the NRC provides data and engages in discussion on the DOE produced

² PACE notes that the "case studies" presented by NRC staff at the public meetings conspicuously failed to include the ongoing BNFL/Oak Ridge recycling (or any other DOE effort) -- even though this recycling is obviously the largest and most consequential of metals recycling activities.

waste, this Commission's effort to cut off public comment on NUREG-1640 is premature.

5. The NUREG Document Cannot Be the Lawful Basis for the NEPA Analysis Which the Commission Must Perform

As PACE understands it, the NUREG document is to serve as the predicate for the scoping of the Commission's analysis under the National Environmental Policy Act ("NEPA"). The NUREG document, as summarized above, is demonstrably biased and deficient. The use of the document as the cornerstone of any NEPA scoping or EIS will necessarily taint all that follows.

II. Conclusion: The Current NUREG Document Must Be Discarded: However, Full Disclosure and Opportunity for Comment on its Taint and Further Defects Are a Predicate to Further Proceedings Here

In light of the foregoing, it is respectfully requested that the Commission:

(1) confirm that NUREG-1640 is both so substantially tainted and deficient as to provide an unacceptable basis for further action here:

(2) provide the public with full disclosure of all facts related to the development of the tainted NUREG-1640 document (as discussed above and in PACE's prior comments) so that the public might have basis for determining whether and how the taint will extend to any further action taken by the Commission;

(3) as a corollary to "2", alter the cut-off date for public comments on NUREG-1640 until 90 days following the date at which the Commission makes available for public comment: (a) full explanation and documentation of the circumstances surrounding the employment (over the course of nearly a decade, and the expenditure of millions of dollars) of a tainted contractor; (b) provision of all documents relating to the work produced by SAIC, as further discussed above.

Attachment A

Union News.

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NRC should scrap plans to reuse radioactive metals

A decision by state regulators in Tennessee to permit 6,000 tons of radioactive scrap nickel to be recycled into general use should set off loud alarms in Washington and the rest of the nation.

Without any public debate or hearings, Tennessee officials in March gave the green light to British Nuclear Fuel Inc. to sell "cleaned" metal it has removed from machinery used to make nuclear weapons at the United States government's nuclear facility in Oak Ridge, Tenn. Although some of the radioactivity can be removed from internally contaminated metals - in this case, nickel - radioactive byproducts cannot be completely cleansed.

As it is, the Nuclear Regulatory Commission allows metal that has been cleansed of surface contamination to be recycled and released into general use on a case-by-case basis. Such metals are sold to scrap dealers who in turn sell the scrap to steel mills and foundries where it is melted-down along with other metals and recycled into products ranging from automobiles to frying pans. The decision in Tennessee to include some metals internally contaminated by radioactivity to be recycled makes an already extremely dubious process downright frightening. As U.S. Rep. Edward J. Markey, D-Mass., put it recently: "Do we want radioactive metal to become part of consumer products?"

Markey and other members of Congress six weeks ago demanded that the NRC investigate the actions of the Tennessee regulators. The NRC, meanwhile, is debating whether to set a federal standard to determine the level of radioactivity that should be permissible in recycled scrap metal. Cur-

rently, no such standard exists.

Proponents of recycling such material, including the Nuclear Energy Institute which represents the nation's nuclear power industry, say they would welcome such standards. While acknowledging that contaminated metals cannot be made 100 percent free of radioactivity, they argue that Americans are exposed to low-level radiation every day and the risks associated with radioactive metal after it has been cleaned is minimal.

Environmentalists say none of this contaminated metal should be recycled into other products.

The American steel industry, labor unions and scrap metal dealers occupy a stance somewhere between the two. Steel makers are concerned that negative public perception could seriously hurt their industry. The unions are worried about the health and safety of their members. Scrap dealers and the steel mill operators are reluctant to be put in the position of having to be de facto nuclear regulators.

One thing is clear: The NRC must take some action.

We recommend it begins by forbidding the recycling of internally contaminated metals into general commercial use. And we think that, since surface contaminated metals are already sometimes recycled after a decontamination process, the NRC should set a national standard for such material that is set at the level of detection. Anything that causes radiation detectors to go off should be restricted to facilities that are licensed to handle radioactive products.

Leaving regulation up to individual states is just too risky to be permitted.