

## VII. Making DOE Accountable

### A. Epidemiologic Research Activities [by Daryl Kimball] <sup>1</sup>

The involvement of the Department of Energy (DOE) in the supervision of epidemiologic research activities on its workforce and on the health and environmental effects on surrounding communities must end. In its place, an aggressive and coordinated investigatory process to assess weapons complex-related occupational and environmental health effects should be established. This should be accomplished by statute, through a new Congressionally-mandated Radiation and Toxins Health Assessment Office within the Department of Health and Human Services (HHS), superseding the present DOE-HHS Memorandum of Understanding.

The new office should direct, coordinate, and initiate comprehensive occupational and environmental health assessments at weapons complex facilities. It should coordinate ongoing and future efforts with the DOE, other HHS offices and institutes, the Environmental Protection Agency (EPA) and state health departments on all matters of potential public health impacts of these facilities. The goal would be to evaluate the possibility and extent of occupational and off-site health effects, develop health-based occupational and off-site health effects, develop health-based occupational safety and environmental cleanup priorities, and address worker and community health concerns.

A primary task of the new office should be to develop and implement a process for identifying worker and community concerns regarding potential health impacts and to obtain broad and meaningful involvement of independent scientists and the public in the health assessments. Such a process should involve oversight and periodic program review by non-governmental panels of qualified independent scientists and representatives of DOE workers and surrounding communities.

Each epidemiologic project should have direct input from the population being studied- workers and/or residents, including Native American peoples, of nearby communities - at every phase from the planning of research, the dissemination of information about ongoing research activities, and the communication of the study's results.

Complete and unqualified access to DOE and contractor records, and to all other relevant epidemiologic data, must be guaranteed both to HHS and to independent, non-governmental scientific researchers, with no restraint on publication or presentation of findings other than the normal processes of peer review.

Congress should mandate substantially expanded budget for weapons complex-related health research. Substantial additional numbers of highly qualified epidemiologist, and other specialists in occupational and environmental health will be needed to assure competent and adequate study both of the nuclear weapons production workforce, the cleanup workforce, and off-site populations. Adequate funding from the DOE's "050" defense production accounts should be used to support such activities.

How well has the government dealt with its responsibility to investigate the health impact of its nuclear weapons production activities? In our view, both during and after its worst abuses, the DOE has violated the basic principles of unfettered scientific investigation as consistently as it has violated environmental and safety considerations.

While often lacking solid data to support their claims, officials of the Complex asserted that all necessary occupational health and safety precautions were in force, that there rarely, if ever, had been serious accidents or toxic releases to the environment, and that there was no immediate threat to public health.

The credibility of the governments' 40-year record of occurrences that no threats to human health had ever occurred has been severely damaged by revelation in recent years of environmental contamination, mistreatment of "whistle-blowers," and untold health effects suffered by some nuclear weapons workers and off-site populations.

In response to the erosion of the DOE's credibility, former Secretary Watkins appointed a panel to

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investigate the DOE epidemiology program. The Secretarial Panel for the Evaluation of Epidemiologic Research Activities (SPEERA) held public hearings from September 1989 to March 1990. Among the recommendations contained in its final report, the SPEERA advocated the removal of some epidemiologic functions from DOE control through a Memorandum of Understanding (MOU) between the Secretary of Energy and the Secretary of Health and Human Services. However, our view is that these are positive, but incomplete solutions, and their implementation to date suggests that there is much less progress than meets the eye.

The MOU gives responsibility to HHS for long-range, analytic epidemiology studies, but leaves the DOE responsible for data collection, quality control, descriptive epidemiology and the occupational health surveillance and safety programs to protect workers. Through the MOU, funding for these epidemiologic research activities, even for HHS work, is still the responsibility of DOE. Budgetary discretion always permits control over the scope and direction of research, and in this case, the HHS research effort will be limited by relatively small DOE's annual funding requests.

Negotiations between DOE and HHS dragged on for nine months before the MOU was signed by Watkins and HHS Secretary Louis Sullivan in December 1990. During that time, the DOE was active in direct negotiations with state health departments to commission the same type of studies that were specified as HHS's responsibility under the MOU. DOE funded, state-conducted studies of populations living near DOE weapons plants are now underway in several states. While it is productive to include non-DOE scientists in the epidemiology research effort, it is clear that without coordination and adequate funding and sufficiently independent state-directed research, these efforts may not support the public health policy needs of the populations affected by the weapon's facilities.

DOE recently interpreted the MOU to mean that it has no responsibility for collecting new radiation and worker health data for the analytic studies to be conducted by HHS. The DOE plans to deposit only existing data in the Comprehensive Epidemiologic Data Resource (CEDR). The DOE has indicated that it will not survey its own facilities to prepare an accurate inventory of the types and amounts of data files in its possession to determine what might be useful for epidemiologic research. Without access to the records of exposures and health outcomes of workers in the Complex, and lacking information on the validity and reliability of these basic data, attempts by other scientists at further, more intensive analysis, analysis by different methods, or replication are difficult or impossible.

The DOE-HHS MOU does not resolve the question of which government agency is responsible for the direction and coordination of the full spectrum of health research activities related to the environmental and health consequences of the nuclear weapons complex. As a result of the MOU and other DOE policy initiatives, new research- health surveillance of nuclear weapons production workers, cleanup workers, and off-site populations, as well as descriptive and analytic epidemiology, including dose-reconstruction studies - are currently being conducted by an uncoordinated array of state and federal health agencies. Virtually all funding for this research is dependent on DOE support.

## **Section VII. B. The Cost of Secrecy**

The cost of secrecy has numerous dimensions. Cleanup of the nuclear weapons complex will cost between 230 and 500 billion dollars.<sup>[EMAB]</sup> Class-action litigation against the DOE by Downwinders may ultimately rival the cleanup figures. Secrecy made it possible for the government and its contractors to accrue these costs over nearly five decades. Had the truth been told at the time these activities were occurring, public outrage would have made it impossible for their continuation.

Tom Blanton, executive director of the National Security Archive comments that, "even defense contractors who benefit from the reduced accountability that secrecy provides, are complaining about their costs - some \$13 billion a year, according to the Aero-space Industries Association - for clearances and information controls mandated in the classification system. But it is the American taxpayer who really foots the bill for secrecy. In 1992 Congress appropriated up to \$500 million just to install new locks on the Pentagon's safes." <sup>[Blanton]</sup> President Clinton, in April 1993, ordered a review of the U.S.'s system of keeping secrets, which could result in the release of millions of government documents. Each year the U.S.

government creates between 6 and 7 million new secret documents that the Information Security Oversight Office controls. Tom Blanton proposes the following restructuring of administrative secrecy codes:

- “Every secret should have a sunset, an automatic release date no more than 6 years from creation, written on the document by the classifier alongside his or her name - thus establishing accountability.
- The government should only keep secrets when it can show demonstrable harm from openness, and that the harm outweighs the public interest in openness - a balancing test.
- Nothing should be presumptively classified. No document should be exempt from the balancing test, not even the gross inventories of plutonium and highly enriched uranium. The U.S. must fully participate in non-proliferation global accounting of these dangerous materials. Obviously some secrets must be kept, but to paraphrase Lord Acton, absolute secrets corrupt absolutely.
- Order the bulk declassification of broad categories of information, including environmental health and safety data related to DOE sites. An independent review board should take on bulk release of the enormous backlog of Cold War documents, removing declassification decisions from the hands of the originating agencies. The bill Congress passed in 1992 for the John F. Kennedy assassination files provide an excellent precedent.
- Sharply reduce the number of bureaucrats (now about 6,500) empowered to classify documents, and shifting responsibility to the highest levels. Many of these people could be put to work declassifying documents instead.
- Penalize over classification. Currently, only release of classified information carries penalties. Therefore, there is an incentive to over classify new documents, and deny declassification of old documents.
- The security clearance system needs pruning back to ground level, and the addition of due process rights for both cleared and uncleared job applicants. The only way to save on clearance and secrecy costs is to cut back on investigations, on secrets and on secrets-makers.
- Maintain unclassified information in facilities that have unrestricted public access.
- The Freedom of Information Act must be amended to remove the arbitrary agency interpretation of the law that allows agencies to self-determine what information meets the “in the public interest” criteria, and government contractor records must also be subject to FOIA.”<sup>2</sup>

Representative John Dingell, (D-Mich.) Chairman of both the House Energy and Commerce Committee and its subcommittee on oversight and investigations, released a report declaring that secrecy causes DOE’s problems. “Widely publicized breakdowns of safety at the governments’ nuclear weapons plants are rooted in a perverse devotion to secrecy and poor management, Congressional investigators said in the report.” ...“The safety problems, which came to light mostly over the past two years, were aggravated by a lack of outside scrutiny and effective oversight from the Energy Department, which pays private companies to run the facilities.”...“The latest blow to the weapons program was struck at the Rocky Flats plutonium fabrication plant, near Boulder, Colorado, where FBI agents swooped in to check out allegations of a cover-up of illegal storage and waste disposal practices.”...“Obsessive secrecy and lack of outside oversight have been hallmarks of the nuclear weapons program since its beginning as the wartime Manhattan Engineering District in the 1940s, Dingell said in a letter accompanying the investigator’s report.”...“The investigators said unchallenged secrecy allowed the Energy Department and its private contractors to neglect a need for improved health and safety programs.”...“This penchant for secrecy and the classified nature of the process of making nuclear weapons contributed to a mindset of emphasizing production at the expense of health and safety.”...“The problems cited in this report indicate a breakdown in the DOE’s entire system to insure compliance with its own policy of producing nuclear weapons without undue risk to its workers and the public at large, the report said.” [AP(j)]

In March 1997, the Commission on Protecting and Reducing Government Secrecy, chaired by Senator Daniel Patrick Moynihan, released a comprehensive report that laid out a new framework for restructuring the culture of secrecy. The following May, legislation was introduced in the Senate and the

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<sup>2</sup> Blanton, executive director of the National Security Archive

House of Representatives that reflected the recommendations in the report.

### **Section VII. C. Gaining Information on Legacy of Nuclear Weapons Production**

Piercing the veil of secrecy that surrounds the United States Department of Energy's (DOE) nuclear weapons production complex is a formidable challenge. Public interest organizations like the Environmental Defense Institute (EDI) have led the effort to gain information on the DOE's activities at the Idaho National Engineering and Environmental Laboratory (INL) in southeastern Idaho. INL, formerly known as the National Reactor Testing Station, is a DOE nuclear weapon materials production and nuclear reactor testing site which began operations in 1947. Fifty-two reactors have been built at INL, which represents the largest concentration of reactors in the world. Thirteen of these reactors are operating or operable today.

The U.S. Department of Energy (DOE) and its two predecessors, the US Atomic Energy Commission (AEC), and the Energy Research and Development Administration (ERDA), are good examples of how destructive the culture of secrecy can be. The mission of these agencies has been the development, testing and production of nuclear weapons. The absolute secrecy established during the World War II Manhattan Project, which developed the first atomic bomb, continues to the present. This broad veil of secrecy extends to virtually all aspects of nuclear weapons production. Even environmental, health, and safety information is classified despite the fact that this information has no legitimate "national security" value.

Secrecy allowed the federal government and its contractors to produce and test nuclear weapons without outside regulatory oversight. This climate of secrecy and self-regulation further allowed for abuses of everything from the civil rights of "down-winders" to massive unreported environmental contamination. The government's resistance to disclosing information on its past operations is nothing less than a cover-up of these abuses and avoidance of accountability for its actions. Secrecy about radioactive releases to the environment that will be toxic for tens of thousands of years is not justified. This also represents a double standard not applied to corporate America, which for decades has complied with environmental laws.

Public interest organizations which dedicate their efforts to revealing the truth and demanding government accountability are perpetually handicapped by a lack of access to information. It is more the rule than the exception for an organization to spend years battling with an agency over a Freedom of Information Act (FOIA) request. For instance, the Three Mile Island Public Health Fund litigation over release of DOE Hanford, Oak Ridge, and Los Alamos worker exposure records lasted over three years before the DOE was forced by court order to release the information. [TMI]

The U.S. Congress first established the Freedom of Information Act (FOIA) legislation [5 USC ss 552] in 1966 to ensure that the federal government's activities and its records are open and accessible to the public. [Sen.Doc] FOIA established, for the first time in American history, a statutory right of access by any person to federal agency records.

Unfortunately, federal agencies interpreted the exemptions in the original FOIA broadly and employed a variety of means to discourage use of the Act, including high fees, long delays, and claims that they could not find the requested materials. Congress amended FOIA in 1974, 1976, and 1986 in attempts to further define the government's obligations to respond to information requests and to end agency abuses. Each attempt to amend FOIA, however, was met with sufficient conservative Congressional resistance that definitive language is still missing from the Act.

The separation of powers in the U.S. system provides for three branches of government - legislative (Congress), Executive, (President), and Judicial (Supreme Court). Congress legislates laws, the President executes the laws based on his interpretation of the legislation, and the Supreme Court decides if the laws are Constitutional and if the President has executed the laws according to the intent of Congress. With respect to FOIA requests to executive branch agencies, the President exercises his authority through a process called Executive Orders that "... sets out both substantive and procedural criteria for withholding national security information. In order to withhold information under exemption

1 of the FOIA, the government must demonstrate that the information is in fact, properly classified pursuant to both procedural and substantive criteria contained in the Executive Order." [ACLU]

The vague language in FOIA maintains fertile ground for Presidential interpretation. Each President since Lyndon Johnson has issued his respective interpretation of FOIA through Executive Orders. Ronald Reagan and George Bush made government more secretive through Executive Order on National Security Number 12356. [3 CFR 166] This voided President Jimmy Carter's guidelines [3 CFR 190] on releasing classified information, under which agencies were instructed to balance the public interest against any harm to national security that might ensue. Ronald Reagan's Executive Order said that if a bureaucrat believes the release of a classified document might result in any harm, no matter how slight, then the document cannot be disclosed - regardless of the public benefit of disclosure. Ronald Reagan's Order also established what the American Civil Liberties Union calls a "draconian system of classification".

Classified information falls into one of three groups; Restricted Data, Formerly Restricted Data, and National Security Information. Restricted Data is a special category of classified information primarily used by the DOE. The Atomic Energy Act defines Restricted Data as all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material (such as plutonium); or (3) the use of special nuclear material in the production of energy. Formerly Restricted Data relates mainly to the military use of atomic weapons. National Security Information requires protection against unauthorized disclosure for national defense or foreign relations reasons. [DOE/DP-007/1]

Once it is determined that information falls into one of the above three groups, a decision is made about which of the following four levels of protection is needed; Top Secret, Secret, Confidential, Unclassified Restricted. Top Secret is information of utmost importance to national defense and security. Secret is the level for information which in the event of unauthorized disclosure, could be expected to cause serious damage to national security. Confidential is the lowest level of classified information. Unclassified Restricted categories include Unclassified Controlled Nuclear Information, Applied Technology, and Official Use Only. These unclassified restricted information categories were developed by the Reagan Administration to close the information door previously opened by President Carter. The net effect was the reclassification of documents that the Carter Administration had declassified.

In Jimmy Carter's Administration, a bureaucrat could mark a document for automatic declassification after the passage of a specified period of time. The Ronald Reagan Executive Order removed that allowance so that all documents remain classified in perpetuity, or until someone bothers to conduct a declassification review. Since no legal requirement exists for agencies to declassify information or conduct general declassification reviews, it is no wonder little information was released during the Reagan/Bush years. Another means DOE uses to restrict public access is to house unclassified documents in restricted areas that require security clearance for admittance to the archive.

The Environmental Defense Institute anticipated the Department of Energy's (DOE) resistance to releasing documents and granting fee waivers through FOIA by forming a coalition of eleven organizations called the INL Research Bureau. This coalition filed a FOIA request for documents on radioactive / chemical releases to the environment, and documents on accidents which resulted in releases at the Idaho National Engineering Laboratory (INL). DOE effectively blocked the FOIA request by charging \$1,227,900 for search/copy costs and denying the fee waiver that is provided under FOIA. [Robertson(a)] On another INL Research Bureau FOIA request, DOE effectively blocked document release by charging \$10,400 for INL worker radiation exposure records. [Robertson(c)]

FOIA provides for fee waivers, " 1.) If disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and 2.) If disclosure is not primarily in the commercial interest of the requestor." [10 CFR 1004.9] DOE's fee waiver denial stated: "You [INL Research Bureau] have not shown how release will contribute to a meaningful understanding of government operations or activities." [Robertson(a)]

The only recourse public interest groups have when faced with exorbitant charges and denials of fee waiver, is to take the agency to court. This is a viable option for only a handful of organizations with

staff attorneys and substantial resources. Litigation is simply prohibitive for grassroots groups due to the legal and court costs required for long protracted court battles.

Researchers are left with scouring the publicly available literature that includes periodicals, newspapers, university research reports, and reports by other public interest groups. Other useful information sources are agency administrative record repositories, university library government document holdings, Library of Congress, and agency field office public reading rooms. Many times the references given in the public documents offer citations on internal agency documents that can narrow the search or provide lists for document specific FOIA requests.

The Environmental Defense Institute and other public interest groups across the country are advocating for better access through FOIA and for a roll back of the culture of secrecy. President Bill Clinton could have issued a new executive order to void the Ronald Reagan-George Bush Executive Orders and once again open the information door on federal agency past and present activities. To his credit, President Clinton instructed "... all Federal departments and agencies to renew their commitments to the Freedom of Information Act, to its underlying principles of government openness, and to its sound administration. This is an appropriate time for all agencies to take a fresh look at their administration of the Act, to reduce backlogs of Freedom of Information Act requests, and to conform agency practice to the new litigation guidance issued by the Attorney General..." [Clinton] Attached to the President's Memorandum is Attorney General Janet Reno's memo that states: "I hereby rescind the Department of Justice's 1981 guidelines for the defense of agency action in Freedom of Information Act litigation. The Department will no longer defend an agency's withholding of information merely because there is a 'substantial legal basis' for doing so. Rather, in determining whether or not to defend a nondisclosure decision, we will apply a presumption of disclosure." DOE Secretary O'Leary responded to President Clinton's non-binding memo by releasing information on "Nuclear Guinea Pigs" and nuclear bomb tests. [ACHRE]

Fundamental change, however, in the business of secrecy is yet to emerge from the Clinton White House. A new executive order is needed to substantially restrict what information can be classified and require a ten-year sunset clause for automatic declassification on the document's cover. Congressional action is also needed to remove the vague language in FOIA, and ensure that future administrations will not have broad interpretation powers on FOIA requests.

The Centers for Disease Control and Prevention (CDC) have reluctantly joined the ranks of nuclear secrets requesters. In 1992, CDC initiated a full scale Dose Reconstruction Health Study of the affected populations around the Idaho National Engineering Laboratory (INL). After four years of negotiations with DOE and the Defense Department (DOD), CDC is still waiting declassification review of over 1200 INL documents needed in their research. The primary obstacle is the Navy which claims jurisdiction over DOE documents that deal with Nuclear Navy activities at INL. CDC's researchers report: "The time schedule for the declassification effort set by DOE/ID has continually slipped to the point where the project may be affected and the documents not available until after the project contract date has passed. We requested support from the CDC to determine if the schedule can be improved on to facilitate project closure. Presently, we have no estimate when the documents sent to NRF [Naval Reactor Facility] and DOE-Headquarters may be ready for review." [SC&A] "It seems that there may be other [DOE/DOD] priorities for declassification and that this project's declassification effort may be delayed. Such a delay will result in the documents not being entered into the database by the end of the contract period." [SC&A]

Access to classified information is not the only concern of independent and public health researchers who are trying to uncover the truth. The systematic destruction of 65,000 boxes of INL documents out of a total of 100,000 boxes generated since 1951 is a significant concern for researchers. [SC&A(b)] Only after considerable pressure was exerted by the Environmental Defense Institute, did CDC demand that DOE place a moratorium on further destruction of documents. [Chew] Also see Section VI.D for more information destruction of documents.

Secrecy is the antithesis of openness and therefore a constant challenge to the democratic process. Every major abuse of power has been conducted in a climate of secrecy. The history of American government chronicles the ongoing struggle between the public's right to know and the government's

resistance to full disclosure. The price of secrecy is not just political. According to the Department of Defense contractor's Aero-space Industries Association, \$13 billion a year is paid out in tax dollars for security clearances and information controls mandated in the current classification system. [Blanton] The culture of secrecy and non-accountability also contributed to miss-management of radioactive wastes. This inevitably led to extensive environmental contamination and the \$500 billion Superfund cleanup of the DOE complex.

Flagrant disregard for populations living in the shadow of nuclear facilities has also resulted in massive tort litigation against DOE's operating contractors. DOE reimburses over \$30 million annually for legal fees to outside counsel retained by its contractors, largely in defense of actions brought by third parties. [DOE(a)] The Hanford Downwinder class action suit is scheduled to go to court in 1998. Tax payers for example, paid \$39 million in legal fees to defend DOE's Hanford contractors against "Downwinder" tort claims between 1990 and 1992. [AP(l)] Settling tort claims may end up as big a bill as cleanup of the DOE's nuclear complex. For instance, DOE paid out \$73 million in compensation to Fernald (a DOE facility in Ohio) residents for environmental damage.

When citizens have information on their government's activities, they have power to make informed decisions on public policy. When governments withhold information from the public, citizen power is proportionally diminished. The citizen taxpayer is always left with the bill. Democracy's survival depends on openness to information on all government activities.

### **Section VII. D. Transportation of Nuclear Waste**

Emergency Response Teams with adequate training and equipment are not adequate because the 23 states affected by radioactive waste traffic are unable to generate adequate hazardous materials permit fees to provide funding for appropriate enforcement or emergency response services for existing non-DOE transportation accidents. DOE subsidies are only offered to a couple of the 23 states. The state of Idaho alone saw a 70% increase in hazardous materials accidents in recent years. [Tribune(a)]

The emergency training that has been provided first responders (police, fire, and medical personnel) does not provide the depth necessary to address existing hazardous materials on the rails and roads much less radioactive hazards. Moreover, the federal government does not provide equipment needed nor the funding to provide the necessary equipment for emergency responders. Most emergency response personnel will not have equipment necessary to clean up an accident scene.

6.2 million cubic feet of Transuranic waste currently being stored at 10 different DOE facilities is scheduled to be shipped to the Waste Isolation Pilot Project (WIPP) in southern New Mexico over the next 20 years. DOE currently plans to ship all wastes by truck, with a total of 34,000 shipments. On the route through Colorado, there would be up to 990 shipments per year.

The container that DOE intends to use for shipping Transuranic waste to WIPP, is called the TRUPACT-II. DOE has completed full scale fire, drop and immersion accident tests on a prototype but not on actual production TRUPACTs. According to the SW Research and Information Center which has followed the cask certification issue closely, the prototypes used in the tests are different from the actual casks that will be used for waste shipment. "Among the differences are important containment features - the "O" ring seals, the Z-rings for fires, and the vent ports. Thus, in significant respects the tests may not show whether or not the actual TRUPACTs will meet regulatory standards, which are intended to limit releases of radioactivity, especially in case of accidents. In many of the prototype tests, the container will not be pressurized to actual shipping conditions. Since the stresses on the container and the leakage potential can increase substantially with pressurization, tests with un-pressurized containers will not replicate actual shipping conditions." [Hancock, SWRIC]

Nonetheless, in August 1989, DOE obtained from the Nuclear Regulatory Commission (NRC) certification for TRUPACT-II. Because the 15 production TRUPACTs constructed to date have not met the design specifications of that certification, as a practical matter, DOE still does not have a usable shipping container. To assess radiologic and non-radiologic risks associated with the transport of nuclear

waste by truck, DOE has long used a computer model entitled RADTRAN, even though a RADTRAN analysis does not accurately inform the public about the risks associated with nuclear waste shipping.

- \* The probability of a radiation release from a TRUPACT- II accident is relatively low.  
By calculating the potential damage of a catastrophic accident only after multiplying by its low probability of occurring, RADTRAN masks the consequences of such an accident. For example, the Exxon Valdez had only one accident in 28,000 shipments (or an average spill of 400 gal./shipment) over 15 years. This sounds like a great safety record, but was it really?
- \* Based on density, RADTRAN divides the world into three levels of population along the shipping corridor -- urban, suburban and rural. Because anything less than the urban threshold density qualifies as suburban only two miles of the 874 mile route between Rocky Flats and WIPP qualify as urban.
- \* Because the effects of human error on a probabilistic risk assessment like RADTRAN are so hard to predict, DOE assumes that human error, whether in the manufacture, maintenance of operation of the TRUPACT-II, will not change the outcome, so, human error accounts for zero.

DOE's own calculations show that fewer fatalities and less of a radiation release would result were DOE to maximize shipments by rail. Yet, DOE intends to send all WIPP shipments by truck because it would have more "control."

DOE's maximum credible transport accident assumes a release of only 0.02% of the radiologic contents of a TRUPACT. There is no citation in the WIPP Supplemental Environmental Impact Statement (SEIS) to support this assumption. DOE also makes favorable assumptions about the response time and effectiveness of emergency management that are inconsistent with past occurrences. DOE awarded the first five year contract for WIPP shipments to a firm that has never hauled hazardous materials commercially.

DOE estimates that 20% of the waste bound for the high level waste repository that DOE wants to build under Yucca Mountain in Nevada will come from the nuclear weapons complex. At present, DOE does not have a container for its transport and has essentially no plans for shipping these wastes. DOE does, however, hope to vitrify most of the high-level wastes, generated and stored primarily at Hanford and Savannah River, prior to shipping and emplacement. INL has a calcine process for its high level waste that is stored in silos on site. Most of the issues regarding transport of these wastes are the same as for Transuranic waste. DOE will use RADTRAN, with all of its flaws; they will resist state and local regulation of shipments, they will not provide adequate emergency response training, etc. On the other hand, they have conceded that rail shipments to Yucca Mt. may be safer and intend to use train transport. In 1996, the results from the District Courts reviewing state and city nuclear materials transport regulations have been mixed. One court struck down the Oakland Nuclear Free Zone ordinance; another upheld Colorado's waste transport regulations. Meanwhile, Congress has yet to pass a reauthorized Hazardous Materials Transportation Act that would define tribal, local and state authority over transport of nuclear and hazardous materials.

"If even one percent of the contents of an irradiated fuel cask were to escape in respirable form in an urban area, according to the latest and most authoritative federal health effects studies, thousands of latent cancer fatalities could result, as well as \$2 billion in decontamination costs." [Alvarez,(b)6/21/85] The DOE's actions suggest a mistaken view that nuclear transport safety is not a serious issue. Should DOE be allowed to oversee the next generation of cask design, testing and handling, as delegated under present policy? Cask certification powers should be removed from DOE and vested in the NRC to avoid repetition of these dangerous events.

Accident scenarios in the WIPP Supplemental Environmental Impact Statement (SEIS) outlining the worst case or "bounding case" uses average TRU waste from Rocky Flats. However, the average TRU shipment from Rocky Flats is not representative of the average radioactivity of shipments from other major sites. For instance Hanford shipments contain more than 4 times as much radioactivity, Oak Ridge shipments contain more than 2.5 times as much radioactivity, and Savannah River contains more than 12

times as much radioactivity. [SEIS,p.B-9]