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Mrs. Ruth Van Cleve
Director, Office of
Territorial Affairs
Department of Interior
Washington, D. C. 20240

Dear Mrs. Van Cleve:

During meetings held in your office on May 17 with Messrs. Ted Mitchell and Earl Gilmore, and on July 6 with Dr. Hugh Pratt, I commented upon the general subject of U.S. radiation exposure criteria and its relationship to the Enewetak resettlement. Subsequent to the May 17 meeting, I sent copies of appropriate portions of Federal Radiation Council (FRC) documents to you. The matter also was discussed in our letter to you of May 15, 1979, re the Bikini/Eneu situation. I would, however, like to elaborate a bit on this subject.

The FRC recommended that, for the general U.S. population, the individual should not receive over 500 millirem per year to the whole body or to the bone marrow. The FRC also recommended that "...every effort should be made to encourage the maintenance of radiation doses as far below this guide as practicable." In the absence of knowledge concerning the radiation exposure received by the individual, the FRC "...introduced as an operational technique, where individual whole body doses are not known, the use of a 'suitable sample' of the exposed population in which the guide for the average exposure of the sample should be one-third the (guide) for individual members of the group," (i.e., that it is reasonable to assume that the individual would not vary from the average by a factor greater than 3). Therefore, the FRC indicated that the average exposure for a suitable sample of a population should not exceed 170 millirem per year, assuming that individual exposure levels are not known.

In addition, to protect the genetic pool of the U.S. population (i.e., "Considerations of population genetics..."), the FRC recommended "...a per capita dose limitation for the gonads of 5 rems (i.e., 5000 millirems) in 30 years." The whole body dose was considered to be the equivalent of

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the gonadal dose. This averages out to 170 millirem per year. However, the FRC also recognized that if the "...probable benefits..." to be derived from exceeding these guides were greater than "...the potential risk..." involved, exposures greater than these values could be justified. "The...radiation dose...should not be exceeded without careful consideration of the reasons for doing so; every effort should be made to encourage the maintenance of radiation doses as far below this guide as practicable." And further, "The Guides may be exceeded only after the Federal agency having jurisdiction over the matter has carefully considered the reason for doing so in light of the recommendations...".

Because of the uncertainties inherent in predicting the radiation exposure levels to which the Enewetak people may be subject upon their return to Enewetak Atoll, the Atomic Energy Commission (AEC) Task Group Report included in the Enewetak Environmental Impact Statement (EIS) recommended that exposure limits for the Enewetak people be lower than FRC radiation exposure guidance in order to provide a reasonable margin of safety. For planning purposes, in place of the 500 millirem per year value for the individual, 250 millirem per year was recommended; and in place of the genetic dose of 5000 millirem over 30 years, 4000 millirem over 30 years was recommended.

Regarding radiation exposure limits for the Enewetak people, Dr. William Mills of the Environmental Protection Agency stated in a letter to the AEC dated February 28, 1974, that: "These Trust Territory people are entitled to as much protection as that afforded residents of the U.S. by the Federal Radiation Protection Guides." With respect to the recommended exposure limits stated in the EIS, the Region IX EPA comments on the EIS dated December 12, 1974, stated that they considered them to be "...upper limits...". However, in a meeting held in your office on August 2, 1979, Mr. Todd Joseph of EPA's Office of General Counsel and Dr. Mills of EPA both stated that the 1974 EPA letters expressed public health views and not legal views.

It also should be noted that the FRC recommended that occupational exposure of the whole body be limited to an average of 5000 millirem per year beyond 18 years of age (i.e., "...five times the number of years beyond age 18"). The previously quoted FRC statement pertaining to the possible need for exceeding the guidance and for the desirability of limiting exposures to levels below the guidance is pertinent here also (i.e., "The...radiation dose...should not be exceeded without careful consideration of the reasons for doing so; every effort should be made to encourage the maintenance of radiation doses as far below this guide as practicable.").

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(All of the above guidance "...are not intended to apply to radiation exposure resulting from natural background or the purposeful exposure of patients by practitioners of the healing arts.")

It is apparent in view of the above that arguments on behalf of the Enewetak people are likely to include:

1) That U.S. radiation exposure guidance does not and should not apply to the Enewetak people at Enewetak Atoll, inasmuch as the Enewetak people are not citizens of the United States.

2) That even if they do apply, the benefits to be derived to the Enewetak people by returning to their several home islands clearly outweighs any potential risk involved should the predicted radiation exposure level exceed that of the FRC guides.

With respect to 1) above, the matter was discussed in detail during the August 2 meeting and DOE, DOI, and EPA, together with their respective legal counsel, agreed as to the necessity of determining a U.S. position with respect to the applicability of U.S. radiation exposure guidance in the Marshall Islands generally and at the Enewetak Atoll specifically, and to determine the extent to which the U.S. has the authority and responsibility to enforce such guidance. Both DOI and EPA agreed that these issues must soon be resolved, and agreed to be responsible for providing advice as follows:

EPA

A) Determining whether or not FRC guidance is legally applicable to the Marshall Islands generally and Enewetak Atoll specifically.

B) If the FRC guidance is found to be applicable, determining whether there is any discretion as to its applicability.

C) If the FRC guidance is found not to be applicable, what other authority, if any, does EPA have to establish guidance for the Marshall Islands?

DOI

A) Determine the scope and extent of U.S. authority at Enewetak, both at present and after the termination of the Trust Territory agreement; e.g., does Interior or the United States Government have authority to prevent people from living on islands of their choosing? What are the respective authorities of the Trust Territory Government and the Marshall Islands Government in this area?

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We would hope that firm guidance on these matters might be presented and discussed at our next meeting to be held on August 16, so that the U.S. position can be accurately reflected in the illustrated bilingual book that is being prepared as a basis of presentation to and discussion with the Enewetak people. Any guidance received at that time will be considered for discussion with our translators during the week of August 20, with final copy due at the printer no later than August 28.

With respect to 2) above, it is expected that the legal counsel to the Enewetak people, together with scientific and technical consultants, will evaluate projected radiation exposure levels, relative benefits to be derived from compliance with the FRC guides, and alternatively benefits to be derived from exceeding the guides. If their analysis shows the benefits of exceeding the guides to be dominant, the argument may be made that the Enewetak people have a right to return to islands of their choosing (e.g., Enjebi). If this should come about, the U.S. may well be asked if it concurs in or challenges that analysis. At the meeting on August 2 referred to above, DOI indicated that they would explore the desirability of such an analysis; it is our opinion that an analysis by the U.S. would be of extreme importance. While the Department of Energy is prepared to assist the Department of Interior with respect to the radiological exposure component of such an analysis, we are not in a position to address non-radiological factors which might need to be considered. That such matters should be taken into account in the overall assessments would seem to be in the best interests both of the Enewetak people and of the U.S.

It should be noted at this point that it is not obvious what the implications may be for the U.S. regarding possible litigation. However, we believe that our primary concern must continue to remain that which is in the best interests of the Enewetak people consistent with applicable regulations and law.

We would be pleased to discuss these matters further if you wish.

Sincerely,

Bruce W. Wachholz, Ph.D.
Office of Environment

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