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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

United States Senate

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March 2, 2000

Dr. Richard Meserve, Chairman
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

DOCKET NUMBER
PROPOSED RULE **PR 20**
(64FR35090)

Dear Chairman Meserve:

We are writing to express our serious concerns with Nuclear Regulatory Commission (NRC) regulatory actions which could provide for the release of radioactively contaminated materials for use in consumer products and for other uses. We believe these actions suffer from several flaws. First, they appear to lack sufficient justification and support on the record. Even if such flaws can be corrected, other NRC actions may undermine the objectivity of the process. Second, and more importantly, we believe that such actions may be inconsistent with the Atomic Energy Act and the NRC's mission to protect public health and safety.

As you know, on June 30, 1999, the NRC released an issue paper seeking public input into the question of whether it should broaden its current case-by-case approach which permits the release of radioactive materials for use as consumer products and for other purposes.

Under sections 84 and 161 of the Atomic Energy Act, the NRC has the general responsibility to protect the health and safety of the public from unreasonable risks posed by byproduct and other radioactive materials. Despite the statutory requirement, the major impetus for the NRC to consider a radioactive release rule appears to be improving the consistency of its radioactive release regulations among air, water and solid media.

To our knowledge, NRC has not determined that the actions it is considering to increase the amount of radioactive material in commerce will not constitute an unreasonable risk to the health and safety of the public. Moreover, to our knowledge there have been no NRC economic analyses of the potential negative impact the proposal or regulatory changes could have on the metals recycling and related industries. Finally, NRC has not adequately explained why the consistency of regulatory treatment among differing media justifies the increased amount of radioactive materials in commerce that would result.

We would also note that in considering the Energy Policy Act of 1992, Congress specifically rejected the development of a "below regulatory concern" standard.

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In addition to our concern about whether there exists an adequate basis for changing the current system, several other actions undertaken by NRC suggest that the Commission may have already decided to move forward with changing the current case-by-case approach, regardless of the outcome of the public comment and review of the June 1999 proposal.

For instance, a June 30, 1998, NRC memorandum from L. Joseph Callan to NRC staff directs the staff to focus the rulemaking on "the codified clearance levels above background for unrestricted use that are adequately protective of public health and safety." This direction suggests that NRC may not seriously evaluate the option of not moving forward with a rulemaking. Rather, it seems to indicate that the process is designed to justify further deregulation of nuclear materials rather than objectively analyze whether such a change is warranted.

This concern is underscored by the selection of Science Applications International Corporation (SAIC) to perform the technical analyses that would form the foundation for a rulemaking on this subject. SAIC handles regulatory compliance issues for businesses that have a direct interest in the deregulation of radioactive materials, thereby raising a question of its objectivity on this subject.

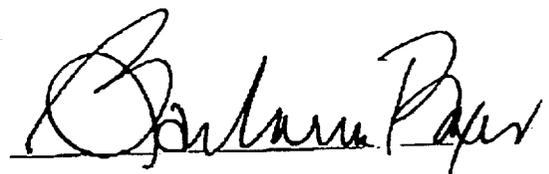
In addition, we understand that the NRC has given its tacit approval of a plan to release approximately 6,000 tons of radioactively contaminated materials for recycling at the Department of Energy's (DOE) K-25 facilities on the Oak Ridge Reservation. To our knowledge, this is the largest proposed release of its kind in history. Allowing such a plan to move forward in advance of resolving the issues raised in the NRC proposal raises serious questions concerning whether those issues can be resolved in an impartial manner.

We believe that until the concerns we have raised are addressed, and Congress is further consulted, the Commission should not proceed with any action that could result in increasing the amount of radioactive materials released into commerce.

We also would appreciate receiving information on the volume of contaminated materials that have been released into commerce since 1992, separated by licensee, the associated radioactivity, and where the materials went.

Thank you for your attention and consideration. Please inform us as soon as possible how the Commission intends to proceed in this matter.

Sincerely,



Frank R. Lautenberg

Garry Keil

J. L. ...

L. Rogy ...

CC: The Honorable Bill Richardson
Secretary
Department of Energy

The Honorable Carol Browner
Administrator
Environmental Protection Agency