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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 15, 2000

CHAIRMAN

The Honorable Max Baucus
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Baucus:

I am responding to your March 2, 2000, letter expressing concerns with the U.S. Nuclear Regulatory Commission's (NRC's) regulatory actions governing the release of radioactively contaminated materials for use in consumer products.

First, I want to assure you that the Commission has not predetermined an outcome to our process for determining whether to initiate a rulemaking to set specific standards for the control of solid material. The NRC is in the preliminary stages of examining its approach for controlling the release of solid material with small amounts of radioactivity regulated under the Atomic Energy Act (AEA) from licensed sites. The principal rationale for examining our approach is that there are currently no generally applicable NRC regulations for release of these materials.

To facilitate an examination of this issue, the NRC has sought public input as to whether a national standard pertaining to AEA materials (but obviously not other radioactive materials) should be put in place (among other points). As you note, an initial step in that process was to prepare a paper discussing issues associated with alternative courses of action for public comment. This "Issues Paper" was published in a Federal Register notice (FRN) on June 30, 1999 (64 FR 35090), with a comment period that was originally scheduled to close on November 15, 1999, but which was extended to December 22, 1999. To provide further opportunity for public input, the NRC noticed and held a series of public meetings during the Fall of 1999 at four locations throughout the Nation. Information about current NRC efforts in this area -- including the contents of the Issues paper, opportunities for public comment, and summaries of comments at the public meetings held to date -- is available on NRC's website. The NRC website has the following address: <http://www.nrc.gov/NMSS/IMNS/controlsolids.html>.

The Issues Paper noted that the Commission was considering a rulemaking to set specific standards for control of solid material and that it was seeking public input on major issues associated with such an action before the start of any formal rulemaking process. The Issues Paper solicited input and comment on alternative courses of action, including whether to proceed to develop a rule. This paper further noted that, in making decisions about these alternatives and approaches, NRC would conduct a detailed evaluation of relevant factors -- human health and environmental impacts, cost-benefit considerations, impacts on other

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industries, survey capabilities, and international, Federal, and State initiatives in this area. The Commission is now awaiting an analysis of the matters raised in the Issues Paper from the NRC staff in order to determine a proper course of action. The matters you raise in your letter, such as a limit that would provide adequate protection of public health and safety when radioactively contaminated materials are released and the effects of such a rule on the recycling industry, would be addressed in the rulemaking, if the Commission should choose to proceed with that course of action. Of course, in that case, there would be additional opportunities for public input through comment on a draft generic environmental impact statement and on a proposed rule.

Your letter also states that in considering the Energy Policy Act of 1992, Congress specifically rejected the development of a "below regulatory concern" (BRC) standard. The Commission had issued two policy statements relating to BRC, one in 1986 and another in 1990. These policy statements were not rules and hence were not promulgated pursuant to the Administrative Procedures Act (APA), with attendant rights for public comment and judicial review. In 1992, Congress explicitly revoked these two specific Commission policy statements by passing section 2901 of the Energy Policy Act. However, while the Energy Policy Act eliminated any further effect of the two policy statements, it did not remove the Commission's responsibility under section 10 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 to develop criteria and procedures for evaluating exemption requests for specific waste streams. Moreover, the 1992 Act did not revoke the Commission's general authority under the AEA to exempt classes of material from licensing requirements by rulemaking pursuant to the APA. As a result, the Commission does not believe that the revocation of the two specific BRC-related policy statements created a general prohibition on the Commission's general authority to develop rules for the clearance of material or equipment.

Similarly, Congress did not revoke the Commission's authority to permit release of such material on a site-specific basis. Licensees seek release of such materials when they are no longer useful or when the licensed facilities are decommissioned. In the absence of a standard, NRC has generally addressed the release of solid material on a case-by-case basis using license conditions and existing regulatory guidance. In each case, material may be released from a licensed operation with the understanding and specific acknowledgment that the material may contain very low levels of radioactive material, but that the concentration of radioactive material is so small that its control through licensing for the protection of public health and safety is no longer necessary. This case-by-case approach is consistent with the Commission's general authority under the AEA to regulate material either through the issuance of specific license conditions or through the promulgation of generally applicable rules.

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facility, and information on materials previously released from licensed facilities. These issues are addressed in the enclosure to this letter.

I trust this reply responds to your concerns.

Sincerely,

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Richard A. Meserve

Enclosure: Discussion of Specific Issues

cc: The Honorable Robert C. Smith
The Honorable Bill Richardson
The Honorable Carol Browner



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 15, 2000

CHAIRMAN

The Honorable Joseph I. Lieberman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Lieberman:

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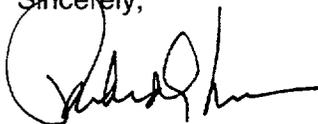
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Richard A. Meserve

Enclosure: Discussion of Specific Issues

cc: The Honorable Bill Richardson
The Honorable Carol Browner



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 15, 2000

CHAIRMAN

The Honorable Harry Reid
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Reid:

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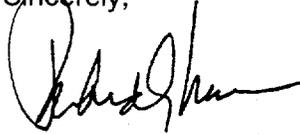
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Richard A. Meserve

Enclosure: Discussion of Specific Issues

cc: The Honorable Bill Richardson
The Honorable Carol Browner



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 15, 2000

CHAIRMAN

The Honorable Frank R. Lautenberg
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Lautenberg:

I am responding to your March 2, 2000, letter expressing concerns with the U.S. Nuclear Regulatory Commission's (NRC's) regulatory actions governing the release of radioactively contaminated materials for use in consumer products.

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The Honorable Carol Browner



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 15, 2000

CHAIRMAN

The Honorable Barbara Boxer
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Boxer:

I am responding to your March 2, 2000, letter expressing concerns with the U.S. Nuclear Regulatory Commission's (NRC's) regulatory actions governing the release of radioactively contaminated materials for use in consumer products.

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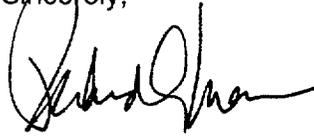
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March 15, 2000

CHAIRMAN

The Honorable Daniel Patrick Moynihan
Committee on Environment and Public works
United States Senate
Washington, D.C. 20510

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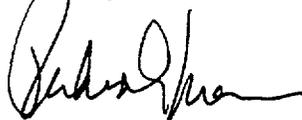
Similarly, Congress did not revoke the Commission's authority to permit release of such material on a site-specific basis. Licensees seek release of such materials when they are no longer useful or when the licensed facilities are decommissioned. In the absence of a standard, NRC has generally addressed the release of solid material on a case-by-case basis using license conditions and existing regulatory guidance. In each case, material may be released from a licensed operation with the understanding and specific acknowledgment that the material may contain very low levels of radioactive material, but that the concentration of radioactive material is so small that its control through licensing for the protection of public health and safety is no longer necessary. This case-by-case approach is consistent with the Commission's general authority under the AEA to regulate material either through the issuance of specific license conditions or through the promulgation of generally applicable rules.

There are three other specific issues in your letter that I would like to address with some additional detail. These include your concerns and questions regarding the selection of Science Applications International Corporation to perform technical analyses, NRC actions related to plans for the release of materials from the U.S. Department of Energy (DOE) K-25

facility, and information on materials previously released from licensed facilities. These issues are addressed in the enclosure to this letter.

I trust this reply responds to your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Meserve". The signature is fluid and cursive, with a large initial "R" and "M".

Richard A. Meserve

Enclosure: Discussion of Specific Issues

cc: The Honorable Bill Richardson
The Honorable Carol Browner

Enclosure 1

Discussion of Specific Issues

A) Issues concerning NRC's contractor SAIC

Issue

"[The concern for NRC objectivity] 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."

Response:

The NRC requires all of its contractors to disclose any work performed for others, or planned work for others, where there is a potential that the work for others will conflict with the contractor's work for NRC. SAIC did not identify any work where there could be a potential conflict of interest. Following receipt of information from the Paper, Allied-Industrial, Chemical and Energy Workers International Union that there was a potential conflict of interest, the NRC issued a Stop Work Order to SAIC on December 17, 1999 and a cure letter on that same date giving SAIC an opportunity to explain and defend its position. The NRC is currently in the process of evaluating responses received from SAIC and will take appropriate action based on the results of its review.

B) Issues related to NRC's actions regarding DOE planned release of contaminated materials

Issue

"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."

Response:

We understand that the Department of Energy (DOE), as part of its program to decommission and close various facilities, has contracted with private firms to provide decommissioning and decontamination services for these facilities. Part of this process includes decontamination of metals, their survey for residual contamination, and then release for unrestricted use if they meet DOE release criteria. In one case, a DOE contractor, BNFL, has proposed to utilize a subsidiary company (Manufacturing Sciences Corporation (MSC)) to decontaminate and release nickel metal generated as a part of the decommissioning operations (this is the nickel case referenced in the March 2, 2000 letter from Senator Baucus, et al). Although prototype testing of a proprietary decontamination process has been conducted by MSC under a State of

Tennessee license, no nickel metal has been released, or is currently planned for release. Secretary of Energy Richardson recently announced that the nickel material in question will not be considered for release from the DOE facility until there is a national standard for release of volumetrically contaminated materials.

NRC does not have regulatory jurisdiction over the release of materials in this case. The regulatory authority is exercised by the State of Tennessee, an "Agreement State" under Section 274 of the Atomic Energy Act. However, NRC has reviewed information from Tennessee on the proposed decontamination and release of the nickel. NRC's review did not identify any factors suggesting that Tennessee's action creates a public health and safety or compatibility concern warranting the exercise of NRC's authority to suspend Tennessee's Agreement with the NRC. In addition, the Commission believes that the State has acted within its regulatory authority under its Agreement and that the State's action is not preempted by NRC's Federal regulatory program. NRC staff is continuing to follow up with Tennessee on details of the process and methodology used by Tennessee in granting approval for the release.

C) Issues related to previous releases of materials by licensees

Issue

"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."

Response:

NRC inspectors routinely inspect the licenses' radiation protection programs and implementing procedures, which includes the survey records, for compliance with regulatory requirements. However, while 10 CFR Part 20 requires that records be kept of all radiation surveys, these survey records are not required to be submitted to NRC. Therefore, NRC does not track the volume of solid material released and does not have data that would allow estimate of the volume, the portion that was released into commerce, or where the materials went.

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United States Senate

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

March 2, 2000

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

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.

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.

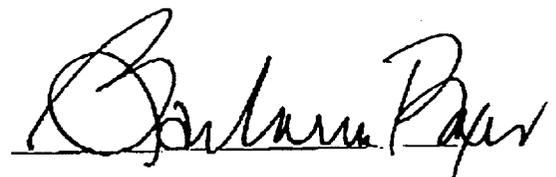
We believe that until the concerns we have raised are addressed, and Congress is further consulted, the Commission should not proceed with any action that could result in increasing the amount of radioactive materials released into commerce.

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

Harry Reid

J. Biden

L. R. Brown

CC: The Honorable Bill Richardson
Secretary
Department of Energy

The Honorable Carol Browner
Administrator
Environmental Protection Agency