

May 30, 2001

The Honorable Ted Stevens, Chairman
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing on behalf of the Nuclear Regulatory Commission (NRC) as a follow-up to my testimony before the joint Senate hearing on May 8th concerning U.S. Federal efforts to combat terrorism. During the hearing, I was asked to provide recommendations concerning the organization of the Federal Government's efforts to address terrorism not only within the Nuclear Regulatory Commission (NRC), but also throughout the Federal Government.

Our primary recommendation is that the relevant Federal plans should reflect and acknowledge the NRC's role to combat terrorism. Presidential Decision Directives (PDDs) 39 & 62 and the recently issued Interagency Domestic Terrorism Concept of Operations Plan (CONPLAN) do not reference the NRC. The Federal Response Plan makes only a limited reference to the NRC. Because our licensees are accustomed to dealing with the NRC on emergency-response related issues and because the NRC has engaged in extensive efforts to ensure that we and our licensees can respond to a terrorist event, we believe that integrating the NRC more fully in the coordinated Federal planning is important. In the absence of a specified NRC role in responding to a terrorist-related nuclear or radiological emergency, it is possible that confusion could arise during an actual event from incomplete plans, which could compromise the success of the Federal response.

Perhaps the importance of this recommendation is best explained by discussing the NRC's activities. As you know, NRC is an independent regulatory agency that is responsible for regulating, licensing or certifying certain commercial nuclear facilities. These include 103 nuclear power reactors, 39 nonpower reactors, 8 fuel cycle facilities, 2 gaseous diffusion enrichment plants, and approximately 5,300 licensees authorized to use nuclear and radiological material in the private sector. During the past 20 years the NRC has made a significant commitment to emergency planning and response, especially following the accident at Three Mile Island in 1979. Under the Federal Radiological Emergency Response Plan (FRERP), NRC is the Lead Federal Agency (LFA) for nuclear radiological safety for a safeguards-related incident involving NRC-licensed or Agreement State-licensed nuclear facilities, licensed material, or activity. (The NRC is authorized by Section 274 of the Atomic Energy Act to allow certain States -- termed Agreement States -- to undertake regulatory responsibility for some nuclear materials and facilities.) In fulfillment of its obligations, NRC carefully reviews emergency plans and engages in frequent exercises involving our licensees, Federal and state agencies, and local authorities and emergency response officials.

An emergency response, of course, can be triggered by a wide spectrum of events that could impact the public health and safety. Such an initiating event could include a terrorist attack or a threat of sabotage, theft, or diversion. In response to such an incident involving an NRC-licensed facility, material or activity, the Federal Bureau of Investigation (FBI) assumes its role as LFA for crisis management, and NRC provides technical support. Thus, the NRC's and our licensees' obligations to prepare for an emergency include preparation for terrorist events.

The NRC also imposes obligations to prevent or control a terrorist incident. The NRC requires that power reactors and certain sensitive fuel facilities have the capacity to defend against a Design Basis Threat (DBT). We assume for this purpose that the adversaries will consist of several well-trained and dedicated individuals with knowledge of the facility and possessing weapons (up to and including automatic weapons) and specialized equipment, such as incapacitating agents and explosives. See 10 C.F.R. § 73.1(a). Licensees prepare to respond with careful access controls, surveillance and intruder-detection systems, physical and defensive barriers, continually manned command and control stations, armed response teams, and specialized training for operators and guards. NRC oversight currently includes detailed inspections, as well as table-top and force-on-force exercises involving expert contractors.

In short, the NRC has extensive activities related to the response to a terrorism incident and we believe this fact should be recognized in the Federal response plans. We would be remiss if we did not acknowledge, however, that, with regard to terrorism, the lack of a clearly defined role for NRC in the PDDs and related response plans has been mitigated by our excellent day-to-day working-level relationships and exercises with other Federal, State, and local agencies. These interactions repeatedly confirm the expectation of other agencies that the NRC would (and should) be called upon in an actual event involving NRC-licensed facilities or material. Unfortunately, working relationships can be fragile, which in our view necessitates that NRC's roles and responsibilities be integrated into the fundamental Executive-level directives and Federal response plans.

During the course of the hearing, questions were raised as to whether it was necessary to identify a single agency that would have comprehensive authority (a "terrorism czar"), or whether instead shared agency responsibility was feasible. NRC's experience working with the Federal Emergency Management Agency (FEMA) and the various State and local authorities on emergency issues demonstrates that a shared allocation of responsibility can work. In order for such an arrangement to be successful, however, it is important to provide a clear delineation of each agency's responsibility. In the case of response to radiological emergencies at nuclear units, for example, the NRC has authority for on-site response, while it serves only as an advisor to those who have responsibility for off-site response. This shared allocation of responsibility reflects the skills of the responders and, in our view, is sensible. A similar shared scheme should, in our view, be workable for response to terrorist incidents.

I must add, however, that an essential ingredient of an effective program is the conduct of regular exercises including all the affected parties. In this connection, NRC conducts periodic emergency response exercises with our licensees and involved Federal and State agencies and local authorities in order to ensure a high level of preparedness. (Several of these exercises have included a robust nuclear safeguards component in order to validate our ability to provide Federal support in response to terrorist and criminal acts at NRC-licensed activities.) We conduct these exercises within the interagency framework, involving the FBI,

DOE, Environmental Protection Agency (EPA), FEMA, and State and local authorities. We also participate in exercises conducted by other agencies, as we did on May 16, 2001, by fulfilling our responsibilities under the FRERP in an FBI-led exercise involving a postulated terrorist attack on the NRC-licensed Palo Verde Nuclear Power Plant near Phoenix, Arizona. Such exercises are the vehicle by which we and other agencies test response plans, reconcile coordination issues, and gain a better understanding of the capabilities of other agencies.

As I mentioned at the hearing, in addition to changes that affect NRC's interagency coordination and planning, we continue to seek certain legislative changes that would strengthen our terrorism-related regulatory program. These changes include: authorizing guards at Commission-designated licensed or certified facilities to carry and use firearms to protect property of significance to the common defense and security; making it a Federal crime to bring unauthorized weapons and explosives into NRC-licensed facilities; and making Federal criminal prohibitions on sabotage applicable to the operation or construction of certain nuclear facilities (such as a nuclear reactor, or an enrichment or fuel fabrication facility). All of these provisions are currently contained in S. 472, the Nuclear Energy Electricity Assurance Act, Sections 608, 611 and 612. We are also exploring the need for additional legislation to address threatened acts of sabotage against nuclear facilities.

I would like to thank you and the other Committee and subcommittee members for allowing me to inform you of the NRC's efforts to protect licensed commercial nuclear facilities and materials from terrorist acts. The Commission also extends an invitation to you to attend one of our emergency response exercises. These involve activities at the affected site and at our Incident Response Center at our headquarters in Rockville, Maryland. If you desire additional information, please contact me.

Sincerely,

/RA/

Richard A. Meserve

cc: Senator Robert C. Byrd

May 30, 2001

The Honorable Judd Gregg, Chairman
Subcommittee on Commerce, Justice,
State, and the Judiciary
Committee on Appropriations
United States Senate
Washington, D.C. 20510

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Sincerely,

/RA/

Richard A. Meserve

cc: Senator Ernest F. Hollings

May 30, 2001

The Honorable John Warner, Chairman
Committee on Armed Services
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

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Sincerely,

/RA/

Richard A. Meserve

cc: Senator Carl Levin

May 30, 2001

The Honorable Pat Roberts, Chairman
Subcommittee on Emerging Threats
and Capabilities
Committee on Armed Services
United States Senate
Washington, D.C. 20510

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cc: Senator Mary L. Landrieu

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Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

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In short, the NRC has extensive activities related to the response to a terrorism incident and we believe this fact should be recognized in the Federal response plans. We would be remiss if we did not acknowledge, however, that, with regard to terrorism, the lack of a clearly defined role for NRC in the PDDs and related response plans has been mitigated by our excellent day-to-day working-level relationships and exercises with other Federal, State, and local agencies. These interactions repeatedly confirm the expectation of other agencies that the NRC would (and should) be called upon in an actual event involving NRC-licensed facilities or material. Unfortunately, working relationships can be fragile, which in our view necessitates that NRC's roles and responsibilities be integrated into the fundamental Executive-level directives and Federal response plans.

During the course of the hearing, questions were raised as to whether it was necessary to identify a single agency that would have comprehensive authority (a "terrorism czar"), or whether instead shared agency responsibility was feasible. NRC's experience working with the Federal Emergency Management Agency (FEMA) and the various State and local authorities on emergency issues demonstrates that a shared allocation of responsibility can work. In order for such an arrangement to be successful, however, it is important to provide a clear delineation of each agency's responsibility. In the case of response to radiological emergencies at nuclear units, for example, the NRC has authority for on-site response, while it serves only as an advisor to those who have responsibility for off-site response. This shared allocation of responsibility reflects the skills of the responders and, in our view, is sensible. A similar shared scheme should, in our view, be workable for response to terrorist incidents.

I must add, however, that an essential ingredient of an effective program is the conduct of regular exercises including all the affected parties. In this connection, NRC conducts periodic emergency response exercises with our licensees and involved Federal and State agencies and local authorities in order to ensure a high level of preparedness. (Several of these exercises have included a robust nuclear safeguards component in order to validate our ability to provide Federal support in response to terrorist and criminal acts at NRC-licensed activities.) We conduct these exercises within the interagency framework, involving the FBI,

DOE, Environmental Protection Agency (EPA), FEMA, and State and local authorities. We also participate in exercises conducted by other agencies, as we did on May 16, 2001, by fulfilling our responsibilities under the FRERP in an FBI-led exercise involving a postulated terrorist attack on the NRC-licensed Palo Verde Nuclear Power Plant near Phoenix, Arizona. Such exercises are the vehicle by which we and other agencies test response plans, reconcile coordination issues, and gain a better understanding of the capabilities of other agencies.

As I mentioned at the hearing, in addition to changes that affect NRC's interagency coordination and planning, we continue to seek certain legislative changes that would strengthen our terrorism-related regulatory program. These changes include: authorizing guards at Commission-designated licensed or certified facilities to carry and use firearms to protect property of significance to the common defense and security; making it a Federal crime to bring unauthorized weapons and explosives into NRC-licensed facilities; and making Federal criminal prohibitions on sabotage applicable to the operation or construction of certain nuclear facilities (such as a nuclear reactor, or an enrichment or fuel fabrication facility). All of these provisions are currently contained in S. 472, the Nuclear Energy Electricity Assurance Act, Sections 608, 611 and 612. We are also exploring the need for additional legislation to address threatened acts of sabotage against nuclear facilities.

I would like to thank you and the other Committee and subcommittee members for allowing me to inform you of the NRC's efforts to protect licensed commercial nuclear facilities and materials from terrorist acts. The Commission also extends an invitation to you to attend one of our emergency response exercises. These involve activities at the affected site and at our Incident Response Center at our headquarters in Rockville, Maryland. If you desire additional information, please contact me.

Sincerely,

/RA/

Richard A. Meserve

cc: Senator Bob Graham