

June 15, 2001

The Vice President
United States Senate
Washington, D.C. 20510

Re: Federal Response to Terrorism

Dear Mr. Vice President:

I am writing on behalf of the Nuclear Regulatory Commission (NRC) in support of your efforts to coordinate the Federal government's plans to respond to terrorist events. This letter parallels observations I made in connection with the joint Senate hearing on May 8th concerning efforts to combat terrorism.

Our primary recommendation is that the relevant Federal plans should reflect and acknowledge the NRC's role in combatting terrorism. Presidential Decision Directives (PDDs) 39 and 62 and the recently issued Interagency Domestic Terrorism Concept of Operations Plan (CONPLAN) do not make any reference to the NRC and the Federal Response Plan (FRP) 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.

We suggest a number of revisions to the various plans in order to ensure the recognition and documentation of the NRC role in current Federal response planning:

1. PDDs 39 and 62 make reference to responsibilities in the FRP. Perhaps the easiest way to recognize NRC responsibilities would be to amend the FRP to conform to the allocation of responsibilities in the Federal Radiological Emergency Response Plan (FRERP), which covers radiological emergencies more generally. In the FRERP, NRC has responsibility for events at certain nuclear facilities and events that involve NRC-licensed or Agreement State-licensed materials. (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.) The Department of Energy (DOE) or the Department of Defense (DOD) are the Lead Federal Agencies for emergencies at nuclear facilities owned or operated by DOE or DOD and for events that involve radioactive materials owned by DOE or DOD.
2. Similar distinctions should be made in the Terrorism Annex of the FRP and in the CONPLAN.

3. When departments/agencies are identified for specific responsibilities in future National Security Presidential Directives, NRC lead responsibilities for emergency response involving licensed facilities, materials, and activities should be recognized.

The context for this recommendation is perhaps best explained by describing the NRC's activities. As you know, NRC is an independent regulatory agency that is responsible for regulating, licensing or certifying certain 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 FRERP, as noted above, NRC is the Lead Federal Agency for nuclear radiological safety for an incident involving NRC-licensed or Agreement State-licensed nuclear facilities, licensed material, or activity. 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. 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 the lack of a clearly defined role for NRC in the PDDs and related terrorism 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.

In the course of the recent Senate 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 May 8th Senate 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.

The Commission also extends an invitation to you or your staff 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: See next page

cc: The Honorable Spencer Abraham
Secretary of Energy

The Honorable Joe M. Allbaugh, Director
Federal Emergency Management Agency

The Honorable Condoleezza Rice
Assistant to the President for National
Security Affairs