

September 28, 2001

The Honorable W.J. "Billy" Tauzin, Chairman
House Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Tauzin:

I am writing on behalf of the Nuclear Regulatory Commission (NRC) in response to your letter of September 14, 2001, offering the assistance of the Committee on Energy and Commerce to the NRC in meeting the challenges resulting from the terrorist attacks on the World Trade Center and the Pentagon, and requesting that we forward to the Committee any specific legislative proposals that will better enable the Commission to respond to this tragedy.

Like all Americans, the Commission and its employees are appalled at the recent attacks on the United States, and deeply deplore the toll taken in innocent American lives. We take with great seriousness our role in ensuring that nuclear facilities are adequately protected from such tragic attacks. Immediately after the attacks on September 11, the Commission took a number of responsive actions. All nuclear power plants licensees were notified that they should immediately be placed on the highest state of alert. In response to the President's activation of Government-Wide Continuity of Operations Plans, the NRC implemented its plan to ensure its capability to perform its essential functions -- including activating and staffing the NRC Operations Center 24 hours a day. The NRC's own building security also was immediately upgraded.

In addition to these and other specific actions, the Commission has been in continuous contact with National law enforcement, defense, and intelligence agencies to support the evaluation of any potential terrorist threats involving NRC-licensed nuclear facilities. The Commission is also actively participating in Government-wide evaluations of the need for additional statutory authorities or changes in existing statutes to be better able to combat terrorism. We have also commenced a wide-ranging review of the entirety of our safeguards and security program. This review could identify a need for changes to relevant legislation.

In particular, the Commission is evaluating whether existing NRC requirements should be upgraded and whether the Commission's authority under the Atomic Energy Act should be expanded or clarified. Prior to the recent terrorist attacks, NRC had proposed in legislative packages presented to the 106th and 107th Congress some areas for legislative improvements to address security related issues. Congress was not able to complete action on these proposals. We are enclosing specific legislative proposals that would strengthen our terrorism-related regulatory program. The first three proposals (Enclosure 1) are from NRC's previous submittals and would (1) authorize guards at Commission-designated licensed or certified facilities to carry and use firearms to protect property of significance to the common defense

and security; (2) make it a Federal crime to bring unauthorized weapons and explosives into NRC-licensed facilities; and (3) make Federal criminal prohibitions on sabotage applicable to the operation or construction of certain nuclear facilities (such as nuclear reactors or enrichment or fuel fabrication facilities). These proposals were included in legislation passed by the Senate in Congress and were reported favorably by the House Commerce Committee in the last Congress although the House did not complete action to approve the proposals. In this Congress, they are contained in S. 472, the Nuclear Energy Electricity Assurance Act (sections 608, 611, and 612).

A fourth proposal, which is new and has not been discussed with other Federal agencies, would confer upon guards at NRC designated facilities the authority to possess or use weapons that are comparable to those available to the Department of Energy guard forces or other Federal protective forces to protect against the Design Basis Threat. Some State laws currently preclude guard forces at NRC regulated facilities from utilizing a wide range of weapons. The preliminary language is set forth in Enclosure 2.

I should emphasize, however, the thorough review of the NRC's safeguards and security program is ongoing. If the Commission should conclude that further legislative needs should be addressed, the Commission will promptly provide additional recommendations to your Committee.

We are grateful for your offer of assistance in these matters. If you desire additional information, please contact me.

Sincerely,

/RA/

Richard A. Meserve

Enclosures: As stated

SECTION . CARRYING OF FIREARMS BY LICENSEE EMPLOYEES

Section 161 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) is amended to read as follows:

"Sec. 161. GENERAL PROVISIONS.

"In the performance of its functions the Commission is authorized to --

* * * *

"k. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize--

"(1) such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security; and

"(2) such of those employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of (A) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (B) property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities; to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United

States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission or a licensee or certificate holder of the Commission, or (2) laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection, and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission, or (3) any provision of this chapter that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary and the Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;".

SECTION . UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by adding after "custody of the Commission" the words "or subject to its licensing authority or to certification by the Commission under this Act or any other Act".

SECTION . SABOTAGE OF NUCLEAR FACILITIES OR FUEL

Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended to read as follows:

"a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to--

"(1) any production facility or utilization facility licensed under this Act;

"(2) any nuclear waste storage, treatment or disposal facility licensed under this Act;

"(3) any nuclear fuel for a utilization facility licensed under this Act, or any spent nuclear fuel from such a facility;

"(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or

"(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment or nuclear fuel fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect public health and safety during the operation of the facility;

shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both."

Amendment to the Commission's 161k. proposal that would be inserted immediately before the last sentence of section 161k. of the Atomic Energy Act, as amended:

In exercising the authority granted by this subsection, persons employed at facilities regulated by the Nuclear Regulatory Commission may possess and use any weapon that would be permitted had the guard force been comprised of Federal law enforcement employees.

Identical letter to:

The Honorable W.J. "Billy" Tauzin, Chairman
House Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

The Honorable John D. Dingell, Ranking Member
House Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515