

EDO Principal Correspondence Control

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FINAL REPLY:

Richard Blumenthal
Attorney General, State of CT

TO:

Chairman

FOR SIGNATURE OF : ** PRI ** CRC NO: 02-0086

Chairman

DESC:

ROUTING:

Opposes Proposal made by Combustion Engineering
(CE) to have NRC Assume Full Regulatory Authority
over the Remediation activities of the CE/Windsor
Site

Travers
Paperiello
Kane
Norry
Craig
Burns
OGC, Cyr

DATE: 02/11/02

ASSIGNED TO:

CONTACT:

NMSS

Virgilio

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate with OGC.

Template: secy-017

ELids: secy-01

State of Connecticut

RICHARD BLUMENTHAL
ATTORNEY GENERAL



Hartford

February 8, 2002

Mr. Richard Meserve
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Meserve:

I write as Connecticut's chief civil law enforcement officer to strongly oppose the proposal made most recently in a letter dated January 28, 2002, by Combustion Engineering ("CE") to have the Nuclear Regulatory Commission ("NRC") assume full regulatory authority over the remediation activities of the CE/Windsor site in Windsor, Connecticut. As you are aware, for approximately forty years, nuclear materials of various sorts associated with both civilian and military nuclear energy programs were handled at the 600+ acre CE/Windsor site. Toxic and radioactive wastes remain at the site and currently Combustion Engineering ("CE") is the NRC licensee responsible for remediation of the civilian waste and the Army Corps of Engineers ("ACOE") is responsible for cleanup of the military waste under the Formerly Utilized Sites Remedial Action Program (FUSRAP) program.

For several years, personnel from CE and the ACOE have met with state and federal regulators and representatives from the Town of Windsor to discuss progress in the cleanup of this important site. Throughout this process, all parties have clearly understood that the NRC alone would regulate its licensee and the state of Connecticut through its Department of Environmental Protection ("DEP"), would regulate and oversee the ACOE cleanup as provided by federal law under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). The new CE proposal, in brief, would have the ACOE cede its authority in favor of the NRC for the entire site, effectively eliminating the state's authority to regulate the cleanup to ensure the protection of our citizens and our environment. CE claims that this change would be beneficial because it would reduce the number of federal oversight agencies, speed the clean-up by up to four years, and save as much as 50% of the overall projected costs.

This proposal is unacceptable and illegal. The NRC has no legal authority to regulate non-licensed nuclear material that Congress has designated as the responsibility of another federal program.¹ This issue involves not only the general concern that an agency can only act within its

¹ Obviously, it would be a different matter if the NRC were to suspend a license (a discretionary

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legal authority, but also the concern that the NRC would have no legal authority, if challenged by the regulated party, to compel cleanup of non-licensed material.

Not only is this proposal illegal, but it would also result in the denial of the legal right of the State of Connecticut to have a direct oversight role in the proposed cleanup. As you may know, the FUSRAP program employs a CERCLA-based remediation system. Section 121 of CERCLA requires that the cleanup be compatible with "applicable or relevant and appropriate regulations" of the state, or ARARs. It is thus through the ARAR process that relevant state regulations are applicable under the federal regulatory process. As a result, as long as the ACOE remains in its oversight role, the state's standards must be enforced. I assume it is self-evident that the State of Connecticut takes very seriously the proper remediation of radioactive waste at any site within the state. The Connecticut DEP has developed strong scientifically-based remediation standards and no one should doubt our resolve in enforcing them. At this site, it is our firm, and repeatedly announced intention to have the whole site cleaned up to the most protective applicable legal standard, and that standard is the one enforced by the Connecticut DEP. As long as the ACOE is involved, our state laws will clearly apply. If the NRC takes over site jurisdiction, the state will have no legal mechanism to enforce its standards until the NRC terminates its license upon completion of NRC-required cleanup. At that time, perhaps years in the future, the state will have to intervene and revisit the issues that should be addressed now through the CERCLA process. Obviously, this procedure would deprive the state of the legal oversight of the cleanup to which we are entitled. Equally obviously, it would be an absurdly inefficient process, since Connecticut will be authorized to enforce its higher standards once the NRC authority ends. At that point, much work would have to be done or redone to meet Connecticut standards, resulting, ultimately, in a slower and more expensive cleanup.

I understand that, to date, CE, NRC, DEP, and the ACOE have been working together effectively at the Windsor site. Our experience is that having multiple regulators at a site does not lead to delay or confusion if the parties are committed to cleaning up a site to the highest standards. I also understand that the local municipal officials are comfortable with the existing process, and not with the idea of the ACOE ceding jurisdiction. Their views are always of great importance to this Office.

Ultimately, Connecticut is committed to preserving its regulatory authority and ensuring that the public health and the environment are given the highest protection available under law. The state cannot provide this protection if a private company is able to persuade the NRC to take over jurisdiction of non-licensed materials that Congress has placed in the hands of another federal agency in order to permit the company to save money and time. As governmental bodies we are bound strictly to uphold the law and seek, not the most expedient solution, but one that produces

act within its authority to do) so that the ACOE could clean up a site and then re-impose its license for final de-licensing.

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the best result, and that has the confidence of all the parties involved. In this case, it is the Town of Windsor and the State of Connecticut which are the closest to the problem and hold the greatest stake in the outcome. Eliminating the ACOE, the Town and the state from further direct involvement at the site would not only be illegal, but it would also seriously undermine the credibility of the cleanup process.

Please feel free to contact me at (860) 808-5318, or Assistant Attorney General Robert Snook at (860) 808-5090 if you wish to discuss this matter further.

Very truly yours,



RICHARD BLUMENTHAL

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DIVISION: TRANSPORTATION

DATE: 2/8/02

PAGES TRANSMITTED:

COMMENTS:

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