

October 7, 2002

The Honorable Robert C. Byrd, Chairman
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am responding on behalf of the U.S. Nuclear Regulatory Commission to your letter of September 16, 2002, in which you request our legislative proposals. If enacted, these proposals could enhance security at nuclear facilities regulated by the NRC.

Three of our proposals have been pending in some form before Congress for at least 12 years and the Commission has repeatedly sent these proposals to Congress at two-year intervals. The Senate in the last Congress twice passed these proposals, and the House Committee on Energy and Commerce favorably reported the proposals in the last Congress, but they did not come to the House floor for a vote. Last year three provisions to address security at NRC facilities were introduced in the Senate (S. 1586) and the House Committee on Energy and Commerce again reported them out of Committee as part of H.R. 3016, but again there has been no House floor action. In addition, the substance of these proposals has been included in S. 1746, the Nuclear Security Act, which was voted out of the Committee on Environment and Public Works on July 25, 2002. Unfortunately, the Commission strongly opposes other provisions included in S. 1746.

NRC's three proposals would (1) authorize guards at NRC regulated facilities to carry and use firearms to protect property of significance to the common defense and security (this provision would modify 161k. of the Atomic Energy Act so as to give guards some protection from State criminal prosecution for actions taken during the performance of their official duties); (2) make it a Federal crime to bring unauthorized weapons and explosives into NRC licensed facilities; and (3) make Federal prohibitions on sabotage applicable to the operation and construction of certain nuclear facilities (such as nuclear reactors, enrichment and fuel fabrication facilities). These proposals are overdue for enactment in our view.

We also ask your support for an additional legislative provision we have identified to strengthen the authority of licensees' guard forces. This legislation, which further modifies section 161k., 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 to protect against the Design Basis Threat. Some State laws currently preclude private guard forces at NRC regulated facilities from utilizing a wide range of weapons. The legislation addresses all comments made by the Department of Justice and the Office of Management and Budget has no objection to the transmission of this legislative language from the standpoint of the President's program. This proposal is not included in S. 1586, and we urge its enactment as well.

The Commission has made a concerted effort for many years to enhance security at nuclear facilities. Since the events of September 11, we have renewed our efforts with even greater urgency. We appreciate your consideration of the enclosed proposals. In the meantime, we will continue to examine pending legislation and the results of our ongoing reviews to identify any additional provisions which will enhance our ability to ensure adequate security at nuclear power plants.

I enclose all of our legislative proposals. If you need additional information, please do not hesitate to contact me.

Sincerely,

/RA/

Richard A. Meserve

Enclosure: NRC proposals

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

"(A) 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

"(B) 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 (i) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (ii) 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 and use firearms while in the discharge of their official duties. A person authorized to carry and use 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 and use 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 (A) 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 (B) 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 (C) 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;

“(2) authorize employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (1)(B)(i) or property described under paragraph (1)(B)(ii) to

carry and use, where necessary to the discharge of their official duties, such weapons, devices, or ammunition as the Commission may require. Such employees shall have the power to carry and use such weapons while in the discharge of their official duties, regardless whether such employees have been designated as Federal, State, or local law enforcement officers. Such employees shall have such law enforcement powers as are provided to them under this section and section 161 i of this Act. The Nuclear Regulatory Commission shall issue guidelines, with the concurrence of the Attorney General, to implement this paragraph. The authority conferred by this paragraph with respect to employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (1)(B)(i) or property described under paragraph (1)(B)(ii) shall not be implemented until such guidelines have become effective;"

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--

"(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;

or attempts or conspires to do such an act, shall be fined not more than \$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life."