

March 28, 2003

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

Dear Mr. Chairman:

On March 19, 2003, the Nuclear Regulatory Commission (NRC) provided its views and comments on the draft "Energy Policy Act of 2003." During the House Energy and Commerce Committee's Subcommittee on Energy and Air Quality markup of the draft, the Subcommittee adopted an amendment offered by Rep. Markey regarding consultation between the NRC and the Department of Homeland Security (DHS) on emergency evacuation plans before the NRC issues a license or grants a license renewal for a "sensitive nuclear facility." The NRC opposes the provision.

The emergency evacuation plan consultation provision is not needed. The consultation directed by the provision is, in fact, already being done on a continuing basis for commercial nuclear power plants. Under 10 C.F.R. 50.54(q), (s) and (t) and 10 CFR 50.47, onsite and offsite emergency plans must be developed by licensees and state and local emergency planning organizations and reviewed by the Federal Emergency Management Agency (FEMA) - now a part of DHS -- and the NRC. The emergency plans -- licensee, state and local -- must also be updated to reflect changed circumstances, be reassessed and be tested, including a full participation emergency response exercise every 2 years under our regulations in 10 CFR Part 50, App. E, section IV.F.2 and G. The assessment is done by FEMA in coordination with the NRC. For currently operating plants, the reassessment is a part of NRC's normal continuing operational oversight and is independent of reviews associated with license renewal applications. For new plants, the assessment and exercise are part of the initial licensing review and must be completed before a license is issued (see 10 CFR 50.47 and App. E, section IV.F.2.a). Emergency plan updating, assessment and exercise requirements appropriately tailored to the level of radiological risk posed by the facility are also in place for the Category I fuel cycle facilities (see 10 CFR 70.22(i)(1), (3), (4), and 70.32(i)), Independent Spent Fuel Storage Installations (see 10 CFR 72.32) and the gaseous diffusion plants (see 10 CFR 76.91). In short, NRC's ongoing consultations with FEMA on emergency planning matters assures that DHS is involved and informed concerning emergency planning activities, thus rendering a statutory directive for consultations wholly unwarranted.

The Commission also has views and comments on an amendment that we understand could be proposed concerning whistleblower protection. The amendment would extend the whistleblower provision of Section 211 of the Energy Reorganization Act of 1974 to NRC employees, contractors and subcontractors. The amendment is unnecessary as there are already statutorily established processes in place to protect whistleblowers. NRC employee whistleblowers may challenge workplace retaliatory actions against them by filing a complaint

with the U.S. Office of Special Counsel, and, if dissatisfied with that process, an appeal to the Merit Systems Protection Board (MSPB), in accordance with 5 U.S.C. Chapter 12, Subchapters 2 and 3. MSPB decisions are reviewable by the United States Court of Appeals for the Federal Circuit. Additionally, NRC employees have available to them grievance procedures which allow for review of alleged whistleblower retaliation claims. Thus, we do not see a justification for establishing other redundant processes.

With regard to employees of contractors or subcontractors, the proposal is to amend Section 211 of the Energy Reorganization Act of 1974, which by its terms only provides protection for "employees" who report violations of the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974, not all violations of law. NRC's acquisition regulations, (48 C.F.R. Subpart 2042.570), explicitly mandate the inclusion in contracts for professional services of a provision that permits contractor employees to express health and safety related concerns associated with the contractor's work that may differ from a prevailing staff view.

NRC contractor and subcontractor employees also already have effective remedies available under 41 U.S.C. § 265 for retaliation associated with disclosure of substantial violations of law "related to a contract (including the competition for or negotiation of a contract)." These remedies include an independent investigation by the NRC's Office of the Inspector General and, in meritorious cases, award of appropriate relief, including reinstatement, monetary costs and expenses. Appeal is available to a United States Court of Appeals. Moreover, at the time of the award of the contract, the NRC informs its contractors of the availability of the Inspector General Hotline as a means of reporting fraud, waste and abuse within NRC programs and its contracting operations. The employee may also, more appropriately, seek remedies directly against the employer, rather than the NRC.

The Commission's views on other pertinent parts of the draft "Energy Policy Act of 2003" remain as we expressed in our March 19, 2003 letter. We support many of the provisions but we strongly oppose a number of the proposals. If you have any questions or need additional information, please do not hesitate to contact the Commission.

Sincerely,

/RA/

Richard A. Meserve

cc: Rep. John Dingell