

As we discussed.
>>> Charles Cox 07/30/03 04:18PM >>>

~~Handwritten scribbles~~

F/1

Mr. Michael B. Gerrard
Arnold & Porter
399 Park Avenue
New York, NY 10022-4690

Dear Mr. Gerrard:

I am responding to your letter dated June 18, 2003, addressed to Chairman Diaz. It has been referred to me pursuant to 10 CFR 2.206 of the Commission's regulations. You requested that the Nuclear Regulatory Commission (NRC) use its authority to protect the common defense and security under the Atomic Energy Act of 1954 to close the Radiac facility. As the basis for your request, you stated that the radioactive waste storage operation adjoining a hazardous waste transfer and storage operation at the Radiac Research Corporation in Brooklyn, New York represented a significant risk.

Your request fails to provide sufficient facts to support NRC consideration under its common defense and security authority. As a result, your request does not meet the criteria for consideration as a petition under 10 CFR 2.206. Rather, your request raises potential public health and safety concerns. Since Radiac Research Corporation is a New York Department of Labor (NYDOL) licensee, your concerns should be reviewed by that agency. We note that you have requested such a review in a letter dated June 18, 2003 to the Honorable Linda Angello, Commissioner, NYDOL.

I would like to express my appreciation for your effort in bringing these matters to the attention of the NRC.

Sincerely,

Martin J. Virgilio, Director
Office of Nuclear Material Safety

and Safeguards

cc: Mr. Joseph Spektor, Radiac Research Corporation
Hon. Linda Angello, Commissioner, NY State Department of Labor

Ex 5

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The staff has concluded that your submittal does not meet the criteria for consideration under 10 CFR 2.206 because the concerns and information in your letter relate generally to public health and safety issues. Since Radiac Research Corporation is a State of New York Department of Labor licensee, the health and safety issues are not under the jurisdiction of the NRC and should be reviewed by the State of New York Department of Labor. The staff notes that you have requested such a review in a letter to the State of New York attached to the subject letter. Under the Atomic Energy Act of 1954, the NRC does retain authority to protect the common defense and security. However, your request that the NRC use that authority is not supported by facts sufficient to warrant further inquiry.

I would like to express my appreciation for your effort in bringing these matters to the attention of the NRC.

Sincerely,

Martin J. Virgilio, Director
Office of Nuclear Material Safety

and Safeguards

cc: Mr. Joseph Spektor, Radiac Research Corporation
Hon. Linda Angello, Commissioner, NY State Department of Labor

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*see previous concurrence

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