

June 30, 2004

The Honorable John McCain, Chairman
Committee on Commerce, Science
and Transportation
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On May 20, 2004, S. 2279, which addresses maritime transportation security, was reported favorably to the Senate by the Senate Committee on Commerce, Science and Transportation. The reported bill deals with a number of different aspects of maritime transportation security, including improvement of coordination among Federal agencies with a role relating to maritime transportation. Section 10(a) of S. 2279 deals with the security of nuclear facilities in maritime areas. The Commission understands that consideration is being given to adding section 10(a) to H.R. 2443, the Coast Guard authorization bill for Fiscal Year 2004 now being considered by a conference committee. The purpose of this letter is to inform you of the Commission's concern that section 10(a) is unnecessary and duplicative of ongoing Commission initiatives.

Section 10(a) of S. 2279 provides that the Secretary of Homeland Security shall (1) identify all nuclear facilities on, adjacent to, or in close proximity to navigable waterways that might be damaged by a transportation security incident, and (2) in coordination with the Secretary of Energy, evaluate the security plans of each such facility for its adequacy to protect the facility from damage or disruption from a transportation security incident originating in the navigable waterway. The Secretary of Homeland Security, in coordination with the Secretary of Energy, would also be required to take such steps as may be necessary or appropriate to correct any deficiencies in security identified in the evaluations of the security plans. The language of section 10(a), when read together with the committee report on the bill (Report No. 108-274), strongly suggests that section 10(a) is intended to cover nuclear facilities licensed by the Nuclear Regulatory Commission (NRC) as well as nuclear facilities of the Department of Energy (DOE).

While DOE, with which section 10(a) would require the Secretary of Homeland Security to coordinate activities referred to above, has under its jurisdiction a number of Federally-owned facilities that have nuclear responsibilities, it is the Commission, and not DOE, that is charged by statute with regulation and licensing of commercial nuclear facilities located in the United States. The Commission has first hand knowledge of, and direct experience with, the security programs and capabilities of commercial nuclear facilities. Further, the Commission is well aware of the security issues involved, including the potential for transportation security incidents that could arise as a result of a facility being adjacent to, or in close proximity to navigable waterways.

NRC's security regulations and licensing requirements direct NRC licensees to protect against a range of security threats and to implement security plans that have been approved by the NRC. The NRC staff evaluates the performance of the licensees of facilities, including those located near waterways, against those requirements. Last year, the Commission ordered its power reactor licensees, as well as its Category I materials licensees, to submit revised security plans to the NRC for review. These plans, currently under review, address new security measures and requirements including requirements to defend against waterborne threats, that the Commission established in orders to licensees. The NRC, in coordination with other Federal agencies, including the Department of Homeland Security, continues to assess waterborne threats and countermeasures to mitigate those threats. NRC's coordination with the Coast Guard and the Department of Transportation on these matters has been close, extensive, and effective.

Because the Commission already has the authority and the expertise necessary to evaluate threats to facilities it has licensed and because the Commission already has required power reactor and category I materials licensees to protect against waterborne threats, we would recommend that section 10(a) not be included in the conference report.

However, should some version of the provision be retained, it is vital that the Secretary of Homeland Security coordinate with the Commission, in identifying NRC-licensed nuclear facilities adjacent to or in close proximity to navigable waterways that might be damaged by a transportation security incident, and in evaluating the security plans of such facilities. The failure to mandate coordination between NRC and Department of Homeland Security, rather than DOE, would surely result in a proliferation of overlapping, and even at times conflicting requirements that address the same underlying issues, resulting in confusion of the regulated community and unnecessary consumption of both Government and private sector resources.

Equally important, the Nuclear Regulatory Commission is the appropriate agency to work with the Secretary of Homeland Security in determining steps that must be taken to correct any deficiencies in security identified in the evaluation of the security plans of NRC-licensed nuclear facilities. In any event, the correction of any identified deficiencies may require NRC rulemaking or the issuance of orders to affected licensees. Therefore, the Department of Homeland Security should be required, if some version of this provision is retained, to obtain the concurrence of the Commission with respect to steps required to be taken to correct any deficiencies in security identified in the evaluation of the security plans for nuclear facilities regulated by the NRC.

The Commission's preference is that section 10(a) not be enacted. However, if the conferees believe some version of the provision is necessary, our staff would be available to draft necessary revisions that could reduce the confusion likely to be created by this provision. Please do not hesitate to contact me, if I can be of assistance in explaining further the Commission's views on this matter.

Sincerely,

/RA/

Nils J. Diaz

cc: Senator Ernest F. Hollings,
Ranking Minority Member

Identical letter sent to:

The Honorable John McCain
Chairman, Committee on Commerce,
Science and Transportation
United States Senate
Washington, D.C. 20510
cc: Senator Ernest F. Hollings,
Ranking Minority Member

The Honorable Kay Bailey Hutchison
Chair, Subcommittee on Surface
Transportation and Merchant Marine
Committee on Commerce, Science and Transportation
United State Senate
Washington, D.C. 20510
cc: Senator Daniel K. Inouye,
Ranking Minority Member

The Honorable James M. Inhofe
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator James M. Jeffords,
Ranking Minority Member

The Honorable Ted Stevens
United States Senate
Washington, D.C. 20510

The Honorable Olympia J. Snowe
United States Senate
Washington, D.C. 20510

The Honorable Trent Lott
United States Senate
Washington, D.C. 20510

The Honorable John B. Breaux
United States Senate
Washington, D.C. 20510

The Honorable Ron Wyden
United States Senate
Washington, D.C. 20510

Identical letter sent to:

The Honorable Don Young
Chairman, Committee on Transportation
and Infrastructure
United States House of Representatives
Washington, D.C. 20515
cc: Representative James L. Oberstar,
Ranking Minority Member

The Honorable Frank A. LoBiondo
Chairman, Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation and Infrastructure
United States House of Representatives
Washington, D.C. 20515
cc: Representative Bob Filner,
Ranking Minority Member

The Honorable Howard Coble
United States House of Representatives
Washington, D.C. 20515

The Honorable John J. Duncan
United States House of Representatives
Washington, D.C. 20515

The Honorable Peter Hoekstra
United States House of Representatives
Washington, D.C. 20515

The Honorable Rob Simmons
United States House of Representatives
Washington, D.C. 20515

The Honorable Mario Diaz-Balart
United States House of Representatives
Washington, D.C. 20515

The Honorable Nick Lampson
United States House of Representatives
Washington, D.C. 20515

The Honorable Timothy Bishop
United States House of Representatives
Washington, D.C. 20515

Identical letter sent to:

The Honorable Christopher Cox
Chairman, Select Committee on Homeland Security
United States House of Representatives
Washington, D.C. 20515

The Honorable Bennie G. Thompson
United States House of Representatives
Washington, D.C. 20515