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ADDRESSEE: SEN Hilary Clinton

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September 19, 2006

Senator Hilary Clinton  
476 Russell Senate Office Building  
Washington, D.C. 20510

Representative Edward Markey  
2108 Rayburn House Office Building  
Washington, D.C. 20515

Dear Honorable Senator Clinton and Honorable Representative Markey:

The article, "Al Qaeda Publishes Online 'Dirty Bomb how-to Guide,'" which is published on Senator Clinton's website, is based on a misconception of the role of states in regulating radioactive materials. Clarification of this misconception renders the statement, "Nuclear Regulatory Commission Abdicates Responsibility..." false. The first step in clarifying this misconception is an understanding of the concept of Agreement States and their relationship with the U.S. Nuclear Regulatory Commission. Two concepts then emerge. The first is that by utilizing the capabilities of the states, NRC is not abdicating but actually exercising its responsibilities. Finally, although not necessarily a public health issue, regulating and tracking discreet sources must be termed that to enable the states to use their capabilities.

The Atomic Energy Act of 1954, as amended, (The Act) gives the responsibility for regulating byproduct, source and special nuclear materials. Section 274 of The Act clarifies the duties and responsibilities of states and the federal government in the regulation of these materials. This section allows the federal government, now in the form of the NRC, to enter into agreements with the governor of a state for the "discontinuance of authority" for the regulation of certain types of activities and materials. As a result of one of these agreements, a state becomes the regulating jurisdiction, but the NRC maintains an oversight function. The first agreement signed was with Kentucky in 1962. Currently there are thirty-four states that have such agreements including the states of Arkansas, New York and Massachusetts. In this system, the NRC maintains its responsibility to regulate radioactive materials, which now includes discreet sources of radium, either directly in non-agreement states or by oversight in agreement states.

**Promoting and protecting the health of Iowans**

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Representative Edward Markey  
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To execute one of these agreements the governor of the state must certify and the NRC must find that the state's regulatory program is "compatible" with the NRC's program for regulating these materials. The NRC periodically reviews these programs in agreement states to insure that the states' programs remain compatible. State rules and regulations must be compatible with NRC regulations. This means that an agreement state must adopt requirements that are at most verbatim with NRC regulations or at least contain the essential elements of those regulations. The level of compatibility is determined at the time NRC publishes the requirement. Compatibility provides the consistency in regulation across jurisdictions whether NRC or state. This means that rules and regulations for the National Source Tracking System will be virtually the same across the country.

The governors of states seeking an agreement must also certify and the NRC must also find that a states program is "adequate" to protect public health and safety. The concept of adequacy is also periodically reviewed in agreement states. To maintain an "adequate" determination an agreement state must develop and maintain the same capabilities as the NRC in inspecting radioactive materials, which include sealed sources. State inspectors attend the same courses as NRC materials inspectors and generally conform to the same inspection strategies as NRC. Therefore inspections conducted by states are not different in the level of performance or expertise from those conducted by NRC.

To bring the assets of the agreement states to bear on a given situation, the NRC must, by procedure, designate the issue a "public health and safety" compatibility issue. Any other designation jurisdictionally, eliminates the states from engaging in the issue. Therefore, if the NRC wants state participation, the Commission must publish the regulations under "health and safety," even though there may be another general area into which the issue may fit.

The article on Sen. Clinton's website states:

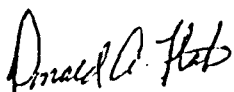
*...the NRC has made the short-sighted and ill-considered decision that controlling these materials is not a security issue and should not be a federal responsibility. Instead, they have deemed this a public health and safety issue and pushed responsibility for implementing the tracking system to the States, effectively eliminating the ability of the NRC to enforce compliance.*

From the limited discussion of the agreement state concept, it is clear that NRC is not side-stepping any jurisdictional or mandated responsibilities. It is, however, in the form of the agreement states, bringing additional, fully qualified resources to bear tracking these sources. To do this the NRC had to publish its regulations under public health and safety even though the stated purpose of the National Source Tracking System is security. The NRC has neither abdicated nor avoided any responsibilities. It has, rather, used the fullest extent of its capabilities

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to employ the maximum resources available in maintaining the security of radioactive sealed sources.

Sincerely,



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