



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

August 11, 1989

The Honorable John Glenn, Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request of July 28, 1989, for the Commission's views on the proposed amendment of section 234(a) of the Atomic Energy Act of 1954, as amended, contained in the Senate Committee on Environment and Public Works' Budget Reconciliation Bill. The amendment would permit the Commission to reduce funds, otherwise required to be deposited in the Federal Treasury as a civil penalty, by an amount a licensee donated to a nonprofit educational institution. The donated funds could only be used to further the protection of the radiological health and safety of the public. Although the Commission does not object to the concept of direct Federal support to educational institutions conducting radiological health and safety research, we do not favor the use of civil penalty payments for this purpose.

The Commission is concerned that the proposed amendment could weaken the effectiveness of our civil penalty program. The desire to avoid the stigma and negative publicity associated with a civil penalty is one of several reasons why a licensee is motivated to maintain good performance or, following issuance of a civil penalty, to improve performance and to assure that effective corrective action has been taken. By making a donation to an educational institution in its vicinity, however, a licensee may receive positive publicity in the community as a result of the poor performance that justified the civil penalty. The Commission believes that the positive publicity associated with a donation may reduce the licensee's motivation to improve its performance and correct deficiencies and reduce the effectiveness of civil penalties as enforcement and compliance tools. The amendment may also reduce the economic impact of a civil penalty because it does not specifically prohibit the licensee from claiming an income tax deduction for its donation to a nonprofit educational institution.

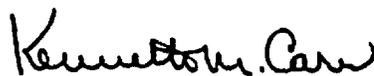
As a secondary matter, the Commission also believes that the agency's costs that will be required to implement the legislation will severely impact our already limited resources. This provision will require resources that would otherwise be used in regulating licensees to be used to administer educational grants. The Commission assesses approximately a hundred civil penalties a year ranging from a few hundred dollars to hundreds of thousands of dollars. Implementation of the amendment, if enacted, could require the Commission to enter into and oversee individual donation agreements in those instances in which the Commission chooses to exercise its discretion under the proposed legislation to direct a portion of the civil penalties to nonprofit educational institution use. In addition, rules and policies will need to be established to help decide the following questions:

- o How will educational institutions become eligible for donation?
- o For what educational purposes will the donations be used?
- o What percentage of the penalties should be eligible for donation?
- o How will potential competition between donees to obtain the donations be resolved?
- o How will conflicts of interest in the grant and use of donated funds be avoided?

Audits will have to be conducted to assure that donated funds are properly granted and used.

The Commission believes that if the intent of Congress is to provide Federal funds to educational institutions for the purpose of sponsoring research in radiological health and safety matters, this intent could be better served by use of Federal funds specifically appropriated for that purpose.

Sincerely,


Kenneth M. Carr

cc: The Honorable William V. Roth, Jr.

JOHN GLENN, OHIO, CHAIRMAN

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United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

July 28, 1989

The Honorable Kenneth Carr
Chairman
United States Nuclear Regulatory Commission
Washington, D.C. 20555

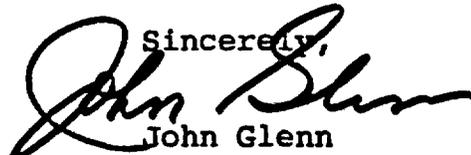
Dear Mr. Chairman:

I am writing to bring to your attention a provision contained in the budget reconciliation bill of the Senate Environment and Public Works Committee. That provision would clarify that the Nuclear Regulatory Commission has the power to reduce any penalties assessed against any of its licensees by an amount equal to the amount which such person agrees to pay to a nonprofit educational institution for use in furthering the protection of the radiological health and safety of the public. I have enclosed a copy of the specific language for your reference.

As Chairman of the Senate Committee on Governmental Affairs, I have had a longstanding interest in matters pertaining to the NRC, particularly with respect to its ability to adequately oversee and, where necessary, levy fines and penalties against its licensees. I would, therefore, greatly appreciate knowing the Commission's views on the aforementioned provision. I will appreciate your prompt reply directed to the attention of Dr. Leonard Weiss, Staff Director of the Governmental Affairs Committee. If you have any questions, please feel free to contact him at 224-4751.

Once again, thank you for your assistance.

Sincerely,


John Glenn
Chairman

Enclosure

**BREAUX AMENDMENT
ENVIRONMENT AND PUBLIC WORKS COMMITTEE
BUDGET RECONCILIATION**

Subtitle B of the Committee Print is amended by adding the following new section:

"Section 4102. Section 234(a) of the Atomic Energy Act of 1954, as amended, is amended by adding the following sentence at the end thereof:

'After proposing such a penalty in accordance with subsection 234(b), the Commission shall have the power to reduce such proposed penalty by an amount equal to the amount which such person agrees to pay to a nonprofit educational institution for use in the furtherance of the protection of the radiological health and safety of the public.'"