



CHAIRMAN

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

COMMISSION  
CORRESPONDENCE

June 16, 1980

Mr. James M. Frey  
Assistant Director for Legislative  
Reference  
Office of Management and Budget  
Executive Office of the President  
Washington, D.C. 20503

Dear Mr. Frey:

This is in reply to your request for the Nuclear Regulatory Commission's (NRC) views on Department of Energy (DOE) legislative proposals regarding the extension of NRC licensing authority over certain DOE facilities for radioactive waste management. DOE's proposed extensions of NRC licensing authority are in some respects inconsistent with the Commission's proposed legislative language which was recently provided in response to your request. Accordingly, for the reasons discussed below, we do not support DOE's proposals insofar as they are inconsistent with the Commission's recommendations.

DOE proposes to extend the NRC's licensing authority over certain DOE waste management facilities as follows:

1. Subsection 202(3) of the Energy Reorganization Act of 1974 (ERA) would be amended by striking out the phrase "high-level" qualifying radioactive waste. This amendment would have the effect of extending the NRC's licensing authority to DOE facilities used primarily for the receipt and storage of transuranic contaminated (TRU) and low-level radioactive wastes resulting from activities licensed under the Atomic Energy Act of 1954.
2. Two new subsections would be added to Section 202 of the ERA to explicitly extend NRC licensing authority to new DOE facilities for the disposal of TRU and new burial grounds for non-defense low-level radioactive wastes generated by DOE.
3. Section 202 of the ERA would be amended to explicitly exclude NRC authority over all other DOE defense program activities.

In NUREG-0527 the Commission recommended that NRC licensing authority be extended to new DOE facilities for the disposal of TRU and non-defense low-level radioactive waste. The President's statement of February 2, 1980, contains the identical proposal. In addition, the Commission recommended the establishment of a pilot program to determine the feasibility of extending NRC regulatory authority to certain defense-related DOE waste management facilities on a consultative basis. I have enclosed draft legislation which would implement the

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President's proposed extensions of NRC licensing authority over government waste facilities in a manner consistent with Commission policy.

DOE's proposals for extending NRC licensing authority are inconsistent with the Commission's recommendations in several respects. Neither the Commission, nor the President, have recommended that NRC licensing authority should be extended to existing DOE facilities used primarily for the receipt and storage of commercially generated TRU and low-level wastes. Both the Commission and the President have recommended that NRC authority should be extended to new DOE facilities for only the disposal of TRU and non-defense low-level wastes. Such an extension would exclude DOE facilities used primarily for the receipt and storage of such waste, but would include any new DOE disposal facility for commercially generated TRU and non-defense low-level waste even if that facility were not used primarily for that purpose. Finally, proposed Subsection 202(a)(6) would extend NRC licensing authority over only new burial grounds used primarily for the disposal of non-defense low-level wastes generated by DOE. This provision would exclude disposal facilities which are not burial grounds and facilities not used primarily for the disposal of non-defense low-level waste. These restrictions would be inconsistent with the recommendations by the Commission and the President. We believe the enclosed draft statutory language would implement our and the President's recommended extensions of NRC's licensing authority over certain DOE waste facilities.

Proposed Section 202(b) would limit NRC authority over certain DOE waste facilities to the explicit licensing authority provided by Section 202(a), as proposed to be amended. This limitation is inconsistent with the Commission's recommendation that a pilot program be established to determine the feasibility of extending NRC regulatory authority over DOE defense-related waste management activities on a consultative basis. The pilot program would address non-defense waste. However, if successful, NRC licensing might be extended into defense areas, given appropriate legislation. Accordingly, the Commission does not support this provision.

Commissioners Gilinsky and Bradford do not agree with the above discussion related to the DOE-proposed modifications to Section 202 of ERA. They support the DOE-proposed modification summarized in paragraph numbered 1 above with the additional deletion from Subsection 202(3) of the word "primarily." They assume that, with respect to existing facilities, licensing means regulatory oversight. They agree with the DOE-proposed two new subsections summarized in paragraph numbered 2, again with the word "primarily" deleted from the DOE-proposed Subsection 202(6) and with the proposed subsection broadened to include significant expansions of existing facilities that are not used solely for the disposal of radioactive wastes generated in defense activities.

Commissioners Bradford and Gilinsky do not agree with the DOE-proposed modification, summarized in paragraph 3 above, that would exclude NRC authority over all defense program activities. Rather, they adhere to the Commission's once unanimous position that the principal defense wastes ought to be under NRC regulatory oversight. (They would exclude defense wastes from regulatory oversight if such oversight would be incompatible with the conduct of national

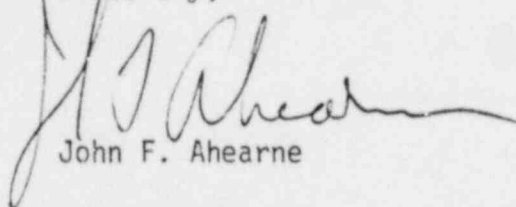
Mr. James M. Frey

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security programs, but they do not believe this to be a significant constraint.) Contrary to its earlier approach, the Commission subsequently recommended that a very limited pilot program be established to determine the feasibility of extending NRC regulatory authority over DOE defense-related waste management activities. That proposed program is, in their view, not of much use for the stated purpose since it does not include defense-related activities, in particular, the large inventories of high-level liquid waste. In Commissioners Bradford and Gilinsky's view, the regulatory program set out by the Commission in June 1978 before the Senate Committee on Environment and Public Works is a better approach ( a copy of the prepared testimony is enclosed).

Chairman Ahearne notes that the subsequent Commission position was taken following a Congressionally mandated study of extending NRC licensing functions.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. F. Ahearne", with a long horizontal flourish extending to the right.

John F. Ahearne

Enclosure 1 - Draft Statutory Language  
Proposed by the Commission  
Enclosure 2 - Commissioner Hendrie's  
Testimony - June 14, 1978

ENCLOSURE 1

The following draft legislation would implement the President's proposed extensions of NRC licensing authority over government waste facilities in a manner consistent with Commission policy.

A. Affirmation of NRC Authority to License Department of Energy Facilities for the Storage of Spent Fuel

Strike Section 202(3) of the Energy Reorganization Act of 1974 and substitute in lieu thereof:

(3) Facilities used primarily for the receipt and storage or disposal of high-level radioactive wastes resulting from activities licensed under such Act, including spent fuel generated in power reactors licensed under such Act and spent fuel generated in foreign power reactors and transferred to the United States under a subsequent arrangement authorized under such Act.

B. Extension of NRC Authority to the Licensing of New DOE Facilities for the Disposal of Transuranic Waste

Section 202 of the Energy Reorganization Act of 1974 is amended by adding the following new paragraph:

(5) New separate facilities authorized after [insert date of enactment of the licensing extension Act] for the disposal of radioactive transuranic waste resulting from activities licensed under such Act or generated by the Department of Energy.

C. Extension of NRC Authority to the Licensing of New DOE Facilities for the Disposal of Nondefense Low-Level Waste

Section 202 of the Energy Reorganization Act of 1974 is amended by adding the following new paragraph:

(6) New separate facilities authorized after [insert date of enactment of the licensing extension Act] for the disposal of low-level radioactive waste resulting from activities licensed under such Act or generated by the Department of Energy, except for low-level wastes generated as a result of national defense programs.

(7) Facilities used primarily for the receipt and storage of low-level radioactive waste resulting from activities licensed under such Act or generated by the Department of Energy, except for low-level wastes generated as a result of national defense programs, and disposed of in foreign countries under a subsequent arrangement authorized under such Act.

8. Extension of NRC Authority to the Licensee for the Disposal of Transuranic Waste

Section 10 of the Energy Reorganization Act of 1974

is amended to read:

(8) New separate facilities authorized after [insert date of enactment of the licensing extension Act] for the disposal of low-level radioactive waste resulting from activities licensed under such Act or generated by the Department of Energy, except for low-level wastes generated as a result of national defense programs.

Energy Reorganization Act of 1974, Pub. Law No. 93-23, 88 Stat. 1487

Section 104(b)(1)(B)

any nuclear reactor licensed under the Atomic Energy Act of 1954

shall be deemed to be a "nuclear reactor" as defined in section 104(b)(1)(A)

ENCLOSURE 2

STATEMENT OF DR. JOSEPH M. HENDRIE, CHAIRMAN  
UNITED STATES NUCLEAR REGULATORY COMMISSION  
BEFORE THE SUBCOMMITTEE ON NUCLEAR REGULATION  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE  
WEDNESDAY, JUNE 14, 1978

Mr. Chairman and members of the Subcommittee, I would like to begin by thanking you for this opportunity to discuss legislative approaches to the critical issue of nuclear waste management. Accompanying me today are Commissioners Gilinsky and Bradford.

As a preliminary observation I would like to express the Commission's view that the present statutory framework for regulating the waste management aspects of nuclear activities in the United States could be considerably improved. Federal agencies responsible for waste management must have clear legal authority to take whatever steps are necessary to continue to protect the public health and safety. Therefore, we believe that legislative changes in the Atomic Energy Act and Energy Reorganization Act would be desirable to ensure that waste management practices are regulated in accordance with a consistent set of standards.

NRC's Present Regulatory Authority Over Waste

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DUPLICATE DOCUMENT

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