



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

March 25, 1980

OFFICE OF THE
COMMISSIONER

The Editor
The Washington Post
1150 15th Street, NW
Washington, D.C. 20005

Dear Sir:

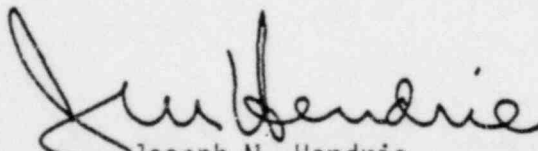
In your editorial "Fine Tuning" on March 20, you described the Nuclear Regulatory Commission as "reluctant" to ask Congress to raise its civil penalty authority from \$5,000 to \$100,000 per violation and to remove the \$25,000 per month limit. The editorial indicates that "two of the five Commissioners voted against the request," apparently as evidence of the Commission's "reluctance."

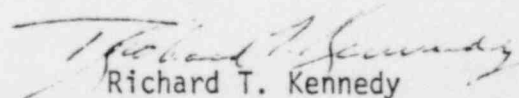
In the interest of accuracy, we would like to call attention to the specific objections to the proposed legislation which we raised. We both supported raising the authority to fine to \$100,000 per violation. In fact, we joined a unanimous Commission in requesting precisely that authority from Congress two years ago, in May 1978. However, we favored a proposal that also would have increased the monthly limit to \$500,000. It is our view that the agency should not be given wholly unlimited and unfettered authority to impose monetary penalties. In a representative system of government, it is our view that the better course would be for elected representatives to provide explicit guidance as to limits it considers appropriate.

Our concerns are heightened by the proposed legislation's elimination of the de novo review presently available in Federal District Court to contest fines levied by the Commission. Under the proposed legislation, the amount of a fine levied by the Commission would be reviewable only in the U.S. Court of Appeals on an "arbitrary and capricious" standard.

The editorial also states that the "Nuclear Regulatory Commission has been reluctant to impose civil penalties" and that "there is a strong feeling ... that fines are inappropriate." It should be noted that the Commission, in a decision from which Commissioner Kennedy dissented, has recently ruled, at the staff's urging, that civil penalties may be imposed even in the absence of any finding of malfeasance, nonfeasance, or misfeasance. Whatever characterization might be applied to such action, "reluctant" hardly seems appropriate.

Sincerely,


Joseph M. Hendrie
Commissioner


Richard T. Kennedy
Commissioner

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