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

CHAIRMAN

November 14, 1989

The Honorable John D. Dingell, Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The purpose of this letter is to share with you the Nuclear Regulatory Commission's (NRC) concerns about the duplicative regulatory scheme for emissions of radionuclides contained in the current Clean Air Act and to urge you, as the Congress moves forward with reauthorization of this legislation, to address this most serious problem by eliminating the duplicative regulatory regime for such emissions from facilities that are already regulated by the NRC.

By way of background, when the Clean Air Act was last reauthorized in 1977, the Environmental Protection Agency (EPA) was granted the authority to regulate radionuclide emissions from a variety of different sources, including emissions from facilities already regulated by the NRC. This authority, which was adopted without any Congressional hearings and without the opportunity for affected agencies to provide comments, has proven to be wholly unnecessary from a health and safety perspective, in view of the comprehensive NRC regulatory program already in place for radionuclide emissions. Additionally, this duplicative regulatory authority will, if implemented, lead to two separate regulatory regimes, one established by the NRC and one established by EPA, with the attendant costs and burdens -- both for the government and the affected private sector -- that invariably result when two agencies are charged with regulating the same activity.

Under the Atomic Energy Act, the NRC has an established and comprehensive regulatory program that regulates emissions of radionuclides in air and water from all facilities licensed by the Commission. These NRC-regulated facilities include over 100 operating nuclear power plants, uranium mills, major universities, and thousands of nuclear medicine departments in hospitals nationwide. The result of this comprehensive regulatory scheme has been to keep public exposure and public risk to minuscule levels. By EPA's own calculations, the total number of potential health effects attributable to air emissions of radionuclides from all NRC licensees <u>combined</u> is less than 0.33 fatalities per year. For this reason, as EPA itself has acknowledged, duplicative EPA regulation in the face of NRC's

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regulatory program is "hard to defend from any logical or policy perspective." Indeed, as EPA indicated in prior comments on this issue, "existing emissions from these sources are already so low that the public health is already protected with an ample margin of safety . . ." 50 Federal Register 5190, 5191 (February 6, 1985). On this point, we couldn't agree more strongly with the position that EPA expressed.

Despite this lack of need for additional regulation of NRC-licensed facilities, EPA has advised us that they feel constrained by existing law to issue standards for such facilities and, accordingly, on October 31, 1989, EPA promulgated regulations for radionuclide emissions from such facilities. Unfortunately, the result of this action will be a duplicative regulatory scheme that is unnecessary from any public health standpoint, wasteful of public and private resources, and even potentially harmful to public health. In the latter regard, the National Institutes of Health (NIH) advised EPA that these regulations would interfere with radioiodine treatment of thyroid patients, as well as divert resources from patient care and research, and thus could cause more deaths than they prevented. Similar comments were filed by representatives of the nuclear medicine community.

It is also evident that compliance with this additional set of EPA regulations will lead to the unnecessary expenditure of resources by EPA, NRC, its Agreement States and its licensees. In its final rule, EPA acknowledged the seriousness of the concerns raised about the possible effects of duplicative, and perhaps conflicting, standards on NRC-licensees. In particular, EPA noted that:

> "While the level of health protection achieved under the NRC standard is generally comparable to that required by EPA's rule, the two standards are very different in form, and the means of demonstrating compliance with each standard impose significantly different regulatory requirements."

In short, EPA's regulations will substantially increase the burden of demonstrating compliance with federal regulations, with no attendant additional protection for the public health and safety, thereby diverting limited resources from other more important safety concerns.

For the foregoing reasons, we urge you in the strongest terms to address this problem. The current Congressional reexamination of the Clean Air Act offers an ideal opportunity to resolve the problem of dual jurisdiction and duplicative regulation by giving exclusive authority over radionuclide emissions from NRC-licensed facilities and activities to NRC. Duplicative regulation is inherently unsound as a matter of public policy and good

government. In a time of limited governmental resources, public funds should not be wasted on parallel programs in two sister agencies for the same activity, especially when no additional protection for public health and safety results. A regulatory scheme such as this will impose significant unnecessary burdens on licensees, require the expenditure of additional federal resources to assess and enforce compliance, result in unnecessary additional costs to consumers, and interfere with proper medical treatment for patients of some medical licensees.

The Commission cannot emphasize too strongly that the current NRC regulatory program provides adequate protection against radionuclide emissions from NRC-regulated facilities with an ample margin of safety. Additional regulation of these facilities by EPA under the Clean Air Act will provide no further protection of the public health and safety. The Congress now has an excellent opportunity to remedy this unfortunate situation by eliminating duplicative regulation under the Clean Air Act. The Commission strongly urges you to do so.

Sincerely,

Kenneth M. Carr

cc: The Honorable Norman F. Lent
William K. Reilly, Administrator, EPA
James B. Mason, M.D., Assistant Secretary for Health, HHS