



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

PDR

December 22, 1989

The Honorable J. Bennett Johnston, Chairman  
Committee on Energy and Natural Resources  
United States Senate  
Washington, D. C. 20510

Dear Mr. Chairman:

I am responding to your November 13, 1989 requests for the Nuclear Regulatory Commission's (NRC's) views on S.1304, the "DOE Nuclear Safety and Environment Act," and S.1802, the "Department of Energy Nuclear Facilities Act of 1989." These bills largely address nuclear safety and waste cleanup at Department of Energy (DOE) nuclear facilities. Our comments are restricted to those provisions of the bills that would affect the NRC's regulatory program.

S.1304

Section 304 of S.1304 would change the definition of solid waste set forth in Section 1004(27) of the Solid Waste Disposal Act to include the radioactive component of mixed radioactive and hazardous waste. This revised definition would not only apply to waste generated at DOE facilities, but also to facilities regulated by the NRC. The NRC strongly opposes this change. Under present law, NRC has sole jurisdiction over the source, byproduct, and special nuclear material components of commercial mixed waste under the Atomic Energy Act, and the Environmental Protection Agency (EPA) has jurisdiction over the hazardous waste component under the Resource Conservation and Recovery Act. In our view, this change would further complicate an already cumbersome system of NRC-EPA dual regulation of commercial mixed waste by providing EPA with shared jurisdiction over the radioactive component. NRC's regulation of the radioactive components of the waste is fully adequate to protect the public health and safety and the environment. There is no justification for additional regulation of the radioactive component of the waste. Therefore, we unequivocally recommend that this proposed change not be enacted.

DF02  
11

S.1802

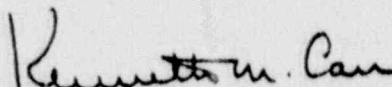
Title IV of S.1802 relates to radioactive waste remediation research. Section 402 requires DOE, in consultation with EPA, NRC, and the National Academy of Sciences, to establish a comprehensive program of research, development, demonstration, and transfer to the private sector of advanced methods for the management of mixed waste generated at DOE nuclear facilities. The Commission supports this proposed program and believes a consultative role for the NRC is appropriate.

Section 403 of the bill, however, gives the NRC greater responsibility. This section would require the NRC, in consultation with EPA, to develop model standards and regulations for the disposal of mixed wastes generated at DOE facilities. DOE would fund the NRC effort. The NRC opposes this provision because it would require NRC to develop a scheme for regulation of activities outside of NRC's purview that are only remotely related to NRC responsibilities for regulating commercial mixed waste. With the exception of facilities for disposal of high-level wastes and Greater-than-Class C low-level wastes, NRC has no regulatory responsibility for DOE waste activities. The Commission has consistently opposed any legislation which would give the NRC authority over other military-related activities of DOE. Accordingly, we are opposed to being required to develop model regulations applicable to DOE defense facilities not currently subject to NRC regulation.

Section 701 of Title VII of the bill would revise the definition of solid waste in the Solid Waste Disposal Act, 42 U.S.C. 6903(27), to exclude waste emplaced in a high-level radioactive waste repository. The Commission supports this provision because it makes it explicit that high-level radioactive waste and spent nuclear fuel are not subject to dual regulation under the Nuclear Waste Policy Act of 1982 and the Solid Waste Disposal Act. Dual regulation is not necessary to protect the public health and safety and the environment from the disposal of high-level radioactive waste and spent nuclear fuel.

If you or members of your Committee have further questions regarding these bills, please do not hesitate to contact me.

Sincerely,

  
Kenneth M. Carr

cc: Senator James A. McClure