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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 27, 1993

The Honorable Richard Lehman, Chairman
Subcommittee on Energy and
Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, D.C. 20515-6201

Dear Mr. Chairman:

This is the Nuclear Regulatory Commission's response to your Subcommittee's request for comments on a draft bill to provide for NRC radiological health and safety regulation of the Department of Energy (DOE) facilities under the "Federal Nuclear Facilities Licensing and Regulation Act." The bill would require NRC licensing of "new" DOE nuclear facilities under NRC standards and procedures that are to be substantially equivalent to those applicable to licensed commercial facilities, provide for extensive participation by the States and the public, and include necessary protections for the national security. The Environmental Protection Agency (EPA) would also be required to issue standards for protection of the public health and safety and environment from radioactive releases from "new" DOE facilities. The EPA standards are to provide a level of protection substantially equivalent to that provided by standards applicable to NRC-licensed commercial nuclear facilities. A Presidential national security waiver from licensing requirements and standards would be possible. The "new" facilities subject to NRC licensing would be DOE production or utilization facilities and nuclear material processing, storage, and disposal facilities, except those authorized under section 110 of the Atomic Energy Act, not in existence, under construction, or specifically authorized by the statute to be constructed on the date of enactment. NRC's current licensing authority over certain DOE facilities under section 202 of the Energy Reorganization Act of 1974 would not be affected. A Federal Facilities Regulatory Review Commission would be established to recommend to Congress an approach to independent regulation of existing DOE facilities.

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The Commission has in the past expressed serious concern about legislation giving it additional regulatory authority over DOE facilities. In particular, it has supported continued separation of defense and civilian nuclear power applications to avoid both the undesirable public perception of a direct link between commercial nuclear power and nuclear weapons, and NRC entanglement as an independent agency in trade-offs between nuclear safety and national defense needs. The Commission has also been concerned that without a substantial increase in resources, the assumption of regulatory authority over DOE facilities could divert resources from NRC's current regulatory program and negatively affect the agency's ability to carry out its safety regulatory mission.

The Commission has reconsidered its historical opposition to NRC regulation of DOE facilities and will not formally object to being given licensing and regulatory authority over new DOE facilities along the lines set forth in the bill, subject to the important conditions explained below. Nevertheless, it should be emphasized that the NRC does not support the bill and expresses no opinion on whether NRC regulation is needed.

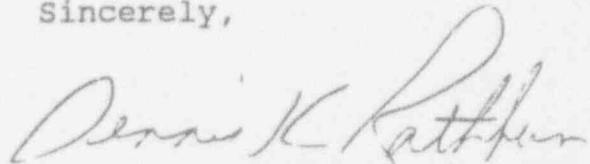
The NRC's lack of objection is subject to the following important conditions. First, we believe that the current principle of separation of radiological regulation of defense and non-defense programs is worth preserving. This is especially true for DOE's program for research, development, manufacture, testing, and dismantlement of nuclear weapons. NRC regulatory authority over these DOE activities would be inconsistent with separating the regulation of defense and non-defense programs. We have similar reservations about being given new authority over any new DOE production facility for the weapons program or for research and development on any new naval reactor fuel. We suggest that NRC licensing and regulatory authority might be limited to those new DOE facilities which are to be part of DOE environmental restoration, high level waste management programs, and reactor facilities not related to weapons production. With regard to reactors, the Commission would further note that the NRC staff has extensive experience with power, test, and research reactors, but very little in the area of production reactors. Thus, it appears that this agency could make a relatively greater contribution to regulating future DOE reactor types similar to power, test, and research reactors than to regulating new production reactors.

Second, the NRC must be given adequate resources to perform these additional duties so that NRC's existing safety mission is not compromised. Authority to impose application, licensing, and inspection fees on DOE would be necessary.

Third, those "new" facilities to become subject to NRC regulations would need to be very carefully defined so as not to disrupt ongoing DOE programs. For example, NRC authority could be limited to major new facilities, not to include additions to existing facilities.

With regard to the proposed Federal Facilities Regulatory Review Commission and its consideration of the appropriateness of extending NRC licensing to existing DOE facilities, the Commission would have the same concerns expressed above. Furthermore, the Commission does not believe it would be appropriate for NRC to undertake regulation of existing DOE facilities unless a threshold determination were made that an incremental improvement in the protection of the public health and safety would result.

Sincerely,

A handwritten signature in cursive script, reading "Dennis K. Rathbun".

Dennis K. Rathbun, Director
Office of Congressional Affairs

cc: Rep. Barbara Vucanovich

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8. COMMENTS