



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

August 29, 1991

The Honorable Robert J. Lagomarsino  
U.S. House of Representatives  
Washington, D. C. 20515

Dear Congressman Lagomarsino:

This is in response to your letter of August 9, 1991, to the Nuclear Regulatory Commission (NRC), requesting this agency's views on the draft Nuclear Ethics Law submitted to you by the National Association of Radiation Survivors. The views expressed in this letter are those of the NRC staff.

The NRC is in agreement with the general proposition that civilian users of radioactive materials should report events that may have significant health and safety implications, and that the public should have access to information regarding abnormal occurrences. In fact, NRC regulations require NRC licensees to report radiation incidents to the agency. See, 10 C.F.R. §20.403 (events involving byproduct, source, or special nuclear material) and §50.72 (events involving nuclear power reactors). Sanctions, including civil penalties, may be imposed on licensees who violate these reporting requirements. (The agency's general enforcement policy is set forth in 10 C.F.R. Part 2, Appendix C.) Further, as required by section 208 of the Energy Reorganization Act of 1974, this agency makes quarterly reports to the Congress on abnormal occurrences associated with any facility licensed or regulated by the agency. These reports are published in the Federal Register so that members of the public may readily have access to them. In light of these facts, we believe that no new legislation is required with respect to reporting of releases from sources licensed or regulated by the NRC. (We defer to the Departments of Defense and Energy with respect to releases by sources under their jurisdiction.)

In addition, the draft legislation presents some serious problems. For example, it appears that a failure promptly to report a radiation incident to the appropriate authorities could result in a felony conviction without proof of criminal intent, an element generally considered to be essential to felony cases. Further, section 1 creates an irrebuttable presumption that a radiation release that "may result" in an exposure to any individual in excess of 1 rem is significant. The purpose of this statement is not entirely clear from the draft. However, assuming that it is intended to trigger the application of section 2 of the bill, we believe that such an irrebuttable presumption would be vulnerable to constitutional attack (as a violation of due process) in a felony prosecution. Even if that were not the case, we would have strong reservations about an

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irrebuttable presumption that could result in imposition of absolute criminal liability (imprisonment at hard labor for up to 5 years) in a situation that may have no potential for harm to anyone.

We also believe that some of the concepts used in the draft bill would be very difficult to apply. For example, section 2(b) would permit imposition of civil and criminal penalties for an "indirect" violation. It is difficult to guess just what acts this might encompass. It is also difficult to understand how someone could be accused of giving false information about a "potential" event (see preamble), i.e., one that has not occurred. What could the standard of verification be in such a case?

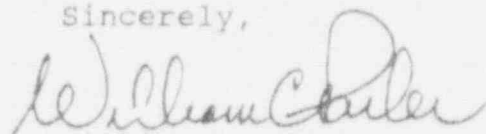
The drafters of the bill seem not to have recognized that information about potential radiation levels or exposures caused by radiation releases are estimates that fall within a range of measurement. In such a context, "accuracy" is a relative term. We do not believe that threatening individuals responsible for making or disseminating such estimates with civil or criminal liability would be either fair or useful.

We also note that section 2(c) of the bill would authorize "any citizen of the United States" to bring an action "for violations" of section 2. We assume that this authority is only intended to extend to civil actions, but the draft is unclear on this point. It would be truly unique, and highly objectionable, if the bill were intended to allow private citizens to prosecute felony actions.

Finally, we should like to call to your attention the fact that the background material accompanying the bill shows some misunderstanding of current Government requirements and practices relevant to radiation releases. For example, the NRC has placed a moratorium on implementation of the Below Regulatory Concern policy, and is in the process of attempting to work out a consensus view on the subject. The Environmental Protection Agency (EPA) has issued very strict regulations regarding release of radiation into the environment.

We appreciate being given the opportunity to comment on the draft bill and hope that our comments are helpful in your consideration of the proposed legislation.

Sincerely,



William C. Parler  
General Counsel