

PDR



CHAIRMAN

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

February 24, 1988

The Honorable Daniel J. Evans
United States Senate
Washington, D.C. 20510

Dear Senator Evans:

It was good to have another opportunity to chat with you last week.

As I promised, I am enclosing for your information a copy of the Commission's responses for the record to several questions relating to the US/Japan Agreement posed to me at the House Foreign Affairs Committee hearing on December 16, 1987.

Sincerely,

A handwritten signature in cursive script that reads "Lando".

Lando W. Zech, Jr.

Enclosure:
Letter to Chairman Fascell

8803250335 880224
PDR COMMS NRCC
CORRESPONDENCE PDR



CHAIRMAN

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

February 24, 1988

The Honorable Dante B. Fascell, Chairman
Committee on Foreign Affairs
United States House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

During the Committee's December 16, 1987 hearing on the U.S./Japan Agreement for Nuclear Cooperation, I agreed to supply some information for the record. That information is contained in the three inserts for the record which are enclosed.

Sincerely,

Lando W. Zech Jr.
Lando W. Zech, Jr.

Enclosures:
As Stated

cc: Rep. William S. Broomfield

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WSP.

INSERT, page 111, line 2629

NRC CONCERNS WITH THE U.S./JAPAN AGREEMENT FOR NUCLEAR COOPERATION
AND THE CHANGES NECESSARY TO MAKE THE AGREEMENT ACCEPTABLE TO THE NRC

As we stated in our prepared statement, our primary concern is the provision granting long-term programmatic approval for the use of U.S.-controlled plutonium in Japanese facilities which do not now exist. Providing such approval for use of U.S.-supplied materials in Japanese reprocessing facilities which have not yet been built and for which proposed safeguards measures have not been fully developed or routinely used by the IAEA does not seem like a prudent action from a nuclear non-proliferation perspective.

The Safeguards Concepts Papers attached to the U.S./Japan Agreement describe a set of general safeguards principles and approaches for plutonium use facilities and some relatively specific requirements for each type of facility. However, the standards for judging the acceptability of individual safeguards measures or the collective system of measures for a facility are generally lacking or ambiguous.

For example, the Concepts Papers state that flexibility is maintained in the concepts to allow for choice among alternative safeguards approaches and to enable attainment of IAEA safeguards objectives and inspection goals. Although NRC agrees with the appropriateness of maintaining flexibility in defining safeguards approaches, we feel that without quantification of the IAEA inspection goals and other pertinent safeguards

measures, the risk is increased of drawing improper conclusions as to the effectiveness of the safeguards approaches.

If NRC had been consulted in the formulation of the Agreement, we would have recommended that performance objectives and standards for judging the acceptability of the individual safeguards measures be defined as quantitatively as possible. We believe this could and should have been done. Alternatively, we would have recommended that the U.S. reserve the right to review and approve the safeguards measures on a case-by-case basis.

A second NRC concern is the provision for plutonium return rights in the Agreement. The Atomic Energy Act requires that the United States retain the right to require that foreign countries return plutonium produced through the use of U.S.-transferred nuclear material or complete nuclear facilities. The Proposed Agreement appears to go beyond legal requirements contained in the Atomic Energy Act in that it makes this requirement reciprocal and refers not only to nuclear material and complete nuclear facilities, but also to components. The Commission questions the non-proliferation policy rationale of a provision whereby a nuclear weapons state would return plutonium to a non-nuclear weapons state. The Commission believes that this could be unwise, even if the particular circumstances under which this might take place are extremely unlikely. If NRC had been consulted in the formulation of the Agreement, we would have recommended that the provision in the Agreement which gives Japan the right

to require the U.S. to return any plutonium produced in U.S. facilities that use Japanese components be deleted.

Our third concern was that under the proposed agreement it appeared that if the Japanese were to decide the U.S. was not implementing the agreement in "good faith", the dispute might be settled by an arbitral tribunal. The State Department subsequently clarified that use of an arbitral tribunal would require U.S. consent. The State Department's response resolves our concern.

Finally, our fourth concern is that the Proposed Agreement provides for tracking and reporting of Japanese-origin components and the plutonium produced from those components in the United States. The Commission believes that the non-proliferation benefits to be gained by the United States are not sufficient to justify the significant extensive tracking and reporting requirements that would be placed on the United States nuclear industry and the United States Government by this provision. Moreover, there is no statutory requirement to track components and the plutonium produced therefrom. In addition, the Nuclear Regulatory Commission may lack the authority to enact the regulations needed to effectively implement the provisions. Therefore, the provisions in some cases may be difficult to enforce. If NRC had been consulted, we would have recommended that the provision for tracking and reporting Japanese-origin components and the plutonium produced from those components in the U.S. be removed.

As we indicated in our July 27, 1987 letter to the President, the Commission recognizes the importance attached to the relationship between the United States and Japan and has no reason to question Japan's non-proliferation credentials. Japan is an important ally and a country with which we have had long standing nuclear cooperation. We are also aware of the need to establish and maintain the United States as a reliable trading partner. As we previously testified, we agree with the Executive Branch view that the Agreement meets all statutory requirements. Nevertheless, the NRC reaffirms its position as expressed to the President and in testimony before the House Foreign Affairs Committee. The Commission continues to believe that the Agreement should be modified to reflect the concerns stated above.

We now understand that the President has considered the views of the NRC and Executive Branch agencies and determined that the Agreement will promote, and will not constitute an undue risk to, the common defense and security. Despite our concerns, if the U.S./Japan Agreement for Nuclear Cooperation is allowed to take effect, the NRC will do all that it can to implement its responsibilities under the Agreement.

INSERT, page 117, line 2789

TERMINATION/SUSPENSION CIRCUMSTANCES

The Commission agrees with the Executive Branch that, should circumstances arise where activities authorized by the Agreement for Cooperation could create a significant increase in the risk of nuclear proliferation or in the threat to United States national security, the United States could suspend its authorization for such activities rather than terminate the Agreement. This suspension authority is set forth in Article 3(2) of the Implementing Agreement entered into pursuant to Article 11 of the Agreement for Cooperation.

INSERT, page 70, line 1598

EXAMPLES OF HOW A FUTURE PLANT COULD BE DEEMED
COMPATIBLE WITH THE CONCEPTS BUT UNACCEPTABLE FROM
A NON-PROLIFERATION POLICY POINT OF VIEW

NRC's main concern in this regard includes the adequacy of accounting for plutonium at large reprocessing facilities as contemplated in the safeguards concepts for these facilities in the Agreement. The safeguards concepts state that the safeguards approach will enable attainment of IAEA safeguards objectives and inspection goals. However, no standards or performance criteria are specified to bound the objectives or goals. It is NRC's understanding that the inspection goal for large reprocessing facilities, calculated with current international standards, could be over a hundred kilograms of plutonium per year. NRC questions the acceptability of use of such a goal.

Also, the Safeguards Concept Paper includes reference to an unproven safeguards measure, near real time accounting (NRTA). The use of NRTA in the Safeguards Concept Paper is not bounded by performance criteria, and it is yet to be demonstrated that NRTA will provide an acceptable level of accounting. In this example, NRTA could be implemented, but the performance of this approach in detecting diversion may not be acceptable.



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SECRETARY

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NOTE FOR: Document Control Desk

FROM: Correspondence & Records Branch

The enclosed document(s) are to be entered into the DCS. An advanced has been sent to the Public Document Room.

PLEASE INDEX INDIVIDUALLY.