



PDR

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

July 16, 1998

The Honorable John H. Chafee, Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The purpose of this letter is to express the views of the Nuclear Regulatory Commission (NRC) regarding the resolution of the differences between the Environmental Protection Agency (EPA) and the NRC with respect to cleanup of radioactive contamination. We had discussed this matter when I met with you on April 28, 1998. And, as you are aware, the EPA forwarded its views to you via a letter dated March 28, 1998. For the reasons explained in this letter, the Commission believes that the resolution of these differences is a matter of policy that can best be solved by Congressional action.

The NRC is committed to fundamental radiation protection standards, as described in national and international standards. This commitment is reflected in NRC's Rule on Radiological Criteria for License Termination, which was issued on July 21, 1997. The rule was arrived at through an enhanced participatory rulemaking process and was accompanied by a voluminous environmental impact statement and extensive regulatory analysis. It is based on considerations of risk, radiation protection principles, national and international standards, and costs compared to associated benefits of cleanup. It uses the principles of setting of an individual dose limit, risk limits, and optimization of protection, plus an additional margin to allow for the potential for exposure to more than one radiation source. NRC's rule includes an all-pathways dose criterion of 25 mrem/yr and, additionally, requires that doses be reduced below the rule's dose criterion through the ALARA process, which requires NRC licensees to achieve doses to members of the public that are as low as reasonably achievable. Demonstration of compliance with the all-pathways dose criterion requires evaluation of the groundwater pathway. The approach of using an all-pathways dose criterion provides a dependable, risk-based standard and is consistent with the recommendations of the National Academy of Sciences, national and international scientific organizations, as well as EPA's 1994 draft Federal Radiation Protection Guidance for Federal Agencies.

Nevertheless, EPA questions basic aspects of NRC's Rule on Radiological Criteria for License Termination, maintains that NRC's radiological criteria for license termination are not protective of public health and the environment, and asserts that if EPA is not satisfied with cleanups conducted to the NRC-established level, EPA may decide to list a previously NRC decommissioned licensee on the National Priorities List. Among other things, this raises the issue of finality of license termination, and possible EPA actions at sites that have complied with the NRC or equivalent Agreement State cleanup standards and had their licenses terminated. We believe that it is important to provide for finality in NRC and Agreement State license

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termination decisions in order to provide licensees and the public with a stable and predictable regulatory framework that is adequately protective of public health and safety and the environment.

In addition, EPA faults the NRC for not establishing a separate, specific requirement for groundwater pathways. This ignores the fact that, under the standards established by the NRC, the dose to a member of the public from all pathways of exposure (air, water, food, and direct radiation) would not be permitted to exceed 25 mrem/yr for those cases in which the NRC would permit unrestricted release of the decontaminated site. It also overlooks the fact that maximum contaminant levels (MCLs) established under the Safe Drinking Water Act (SDWA), which EPA espouses for groundwater cleanup, are not set at consistent risk levels (and include some that are above the NRC's dose criterion). Further, the costs of meeting certain MCLs may be excessive compared to the benefits obtained (in some cases, billions of dollars per individual health effect averted).

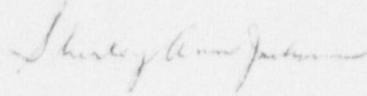
Another aspect of NRC's concern with the application of MCLs is EPA's position that it lacks flexibility with respect to setting drinking water standards and MCLs of radionuclides under the Safe Drinking Water Act and, as such, the application of MCLs for radionuclides under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). It is also EPA's view that application of drinking water standards in other contexts, such as cleanup standards for radioactive contamination or standards of control for monitoring radioactive waste disposal facilities, has no bearing on the proper setting of the drinking water standard, and that the legislative direction in the SDWA prohibits increasing any groundwater standards, such as MCLs, regardless of what changes in science may indicate. In contrast, NRC is not subject to any statutory prohibition on using the latest methodology or advances in science for limiting radiation doses to individuals or principles established in international agreements in setting standards to maximize protection of the public's health and safety. This difference in legislative mandates further exacerbates the differences between the NRC and EPA on radioactive disposal and cleanup.

We recognize that dual regulation is wasteful of both Government resources and the resources of American citizens to whom the regulations apply. Therefore, we have attempted to reach an understanding with EPA in the form of a Memorandum of Understanding (MOU) on decommissioning and decontamination of contaminated sites. I sent EPA Administrator Browner a draft MOU on the subject on August 6, 1997. In response, on February 19, 1998, EPA sent us a revised MOU for consideration. After NRC staff reviewed the EPA-revised MOU, the Commission came to the conclusion that fundamental differences exist between our two agencies, on the basis for protection of public health and safety and the environment. These fundamental differences have the potential for severely impacting a number of areas that fall under NRC jurisdiction such as high-level waste, transportation, and use of radioactive material in medicine.

In sum, the Commission believes that Congressional action can best resolve the differences between EPA and the NRC. Further, we continue to believe, consistent with the standards of the international community, that the approach used in NRC's cleanup rule provides all the regulation necessary for adequate protection of public health and safety and the environment. We are aware, of course, that EPA opposes that view, and has expressed a preference for

continuing interagency deliberations. However, we believe that the EPA's commitment to its current regulatory approach differs so significantly from NRC's support of fundamental radiation protection standards as described in national and international standards that a Congressional resolution of the differences is desirable.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shirley Ann Jackson".

Shirley Ann Jackson

cc: Senator Max Baucus