

July 25, 2002

The Honorable James M. Jeffords
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Yesterday evening about 6:30 p.m. I received a copy of the amendment in the nature of a substitute for S. 1746, which I understand will be offered at your Committee's mark-up this morning. While I appreciate that this substitute now includes in sections 5, 6 and 7 legislation which the Commission has been requesting for a long time and which every witness at your June 5 hearing supported, almost the entire rest of the substitute is so rife with bad provisions that I literally could not sleep last night.

I write as one member of the Nuclear Regulatory Commission. My colleagues have not seen the substitute and I can not possibly coordinate a response with them by the time of your mark-up. But on behalf of the Commission, Chairman Meserve is on record in not supporting last week's version of this substitute in his letter to Senator Smith of July 12 and has submitted a substitute bill to you and other members of the committee earlier this week.

For over a month and a half, since your June 5 hearing, NRC staff have been respectfully trying to point out the numerous serious problems with various drafts of substitutes for S. 1746. Obviously they have made little headway with the drafters. A truly awful bill, the core of which was the needless and counterproductive federalization of guard forces at nuclear power plants, has been translated into a series of merely bad provisions which will impede the Commission's ability to improve on what we believe today is already the best security in the critical infrastructure of this country. These provisions reflect little understanding of the Commission's existing regulatory framework for security and safeguards or of the overall effort within the government on homeland security.

Let me give a few examples of the bad provisions in the substitute. They are not meant to be a comprehensive list. That would take more space and more time than I can devote before your mark-up. The substitute would mandate a task force, chaired by the Chairman of NRC and made up of cabinet members, to carry out eleven tasks and to report their results within 120 days of enactment of the bill. Even if this were an appropriate approach, there is simply no way on God's green earth that such a task force could possibly do what it is called upon to do in 120 days. Many of the members of the task force have no expertise in some of the tasks assigned. Even if Chairman Meserve showed up the first day with a report for his colleagues to endorse, there would be little or no likelihood of bringing all the members of the task force along on all eleven issues in 120 days. Moreover, our staff, which is already stretched to its limits, would lose all momentum on the changes the Commission has underway as they would be forced to devote almost all their efforts to try to move the task force along.

The Commission already is deeply involved in the Homeland Security Council framework established by the President. We are using that framework of policy coordinating committees and working groups to consult with and coordinate with other agencies on issues of overlapping authority. We know who we need to coordinate with and on what. It is not everyone on everything simultaneously. The task force would be entirely duplicative of a structure already in place. Moreover, by asking the task force to address 11 issues of varying degrees of importance within 120 days, the substitute is implying that they are all of equal priority. They are not. For example, the Commission will have in place a threat advisory system, compatible with Homeland Security Presidential Directive 3, by August 20. We expect to have a revised design basis threat by the end of this year, and certainly no later than the end of the first quarter of next year. We must have the flexibility to implement that design basis threat by order, as existing law permits, and not be tied to rulemaking, as the substitute would tie us. Rulemaking is not an appropriate tool for discussing sensitive security information such as the size of the truck bomb, the nature of the waterborne threat, the number of attackers, etc. If the Committee insists on rulemaking, the Commission must be given the authority to protect safeguards information in any rulemaking, notwithstanding the requirements of the Administrative Procedure Act. I could go on. The bottom line is that the task force provisions will impede the very goal of the bill, namely to further improve security at nuclear facilities.

Another example of bad policy involves the provisions relating to the antiterrorism team and federal security coordinator. It is not at all clear what the purpose of this team is. Is it a military team? How is it to interact with the efforts of the newly established Northern Command? The substitute states the purpose as "to provide protection on the perimeter of sensitive nuclear facilities." The only purpose of the full time security coordinator mandated to be at each site that could not be carried out part time by one of our existing resident inspectors appears to be "ensuring full and active coordination" among the site's security force, the anti-terrorism team and any other State, Federal or local security forces. That implies an anti-terrorism team at each facility full-time. Yet elsewhere in the bill the Commission is told to do rulemaking to establish the circumstances in which *the* (emphasis added) antiterrorism team would be deployed to a site. First, this is not something we should do by rulemaking. Second, if there is only one counterterrorism team, there is nothing for the security coordinator to do at the sites most of the time. Finally, if a federal anti-terrorism team were created to deploy to a site when there is a specific credible threat or perhaps to aid a site under attack, it should not have its hands tied by statute that its purpose is to protect the perimeter of the site.

Another example. Gaseous diffusion plants are not sensitive nuclear facilities. They are large chemical plants, which in the scheme of chemical plants pose a modest chemical threat to surrounding communities compared to hundreds, more likely thousands of chemical plants elsewhere in the country. They do not belong in the definition of sensitive nuclear facilities.

Another example. Voluminous Congressional reporting requirements pervade sections 3 and 4 of the substitute. Most of these reports will, I predict, never be read. We already carry out an emergency exercise every two years at commercial reactor sites. We've been doing so for more than two decades. Reports are available. At no more than one or two sites have they ever been requested before by Congress. These reporting requirements will one day be on Senator McCain's or Senator Levin's list of reports to be eliminated if this provision is enacted.

This is not a comprehensive critique. I could go on for several more pages. I would urge the Committee to take a step back from this substitute. I would urge the Committee to consider

the legislation proposed in Chairman Meserve's letter of July 22. I would also urge the Committee to look at the model provided by Senator Inhofe's and Senator Domenici's oversight of the Commission over the past five years in the area of safety. Simply by exercising the Congress's oversight function in an aggressive fashion they were able to bring about profoundly positive changes in NRC's processes and programs. If the Committee has not yet fully understood the NRC's security and safeguards programs and is today considering legislation that will impede rather than promote security at nuclear power plants and other sensitive nuclear facilities, which I firmly believe to be the case, it would be far better to pause and conduct oversight than to pass bad legislation in haste. Hold the Commission responsible for doing all it can under its existing statutory authority. Consider the additional authorities we have requested to do our job. Hopefully pass those provisions like sections 5, 6 and 7 of the substitute that appear to have universal support. Reject those proposals which you feel are inappropriate. This Commissioner, and I am sure the Commission as a whole, three Democrats and one Republican at the moment, hopefully two Republicans shortly, stand ready to work constructively with the Committee and its staff to further improve security at nuclear facilities and in the utilization of nuclear materials. The substitute to S. 1746 that you will consider today is not the way to start this improvement process.

Sincerely,

/s/

Edward McGaffigan, Jr.

cc: Members of the Environment
and Public Works Committee