

November 26, 2001

The Honorable William D. Delahunt  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Delahunt:

I am responding on behalf of the Nuclear Regulatory Commission (NRC) to your letter of September 28, 2001, concerning the merits of federalizing security for the Pilgrim nuclear power plant, and nuclear plants nationally, and the establishment of a no-fly zone above and around the Pilgrim plant. The Commission agrees with your assessment that there is a compelling case for a coordinated, comprehensive security regime for infrastructure of all kinds.

The NRC has in fact previously sought a degree of federalization. We have asked for legislation that would give guards at nuclear power plants the same federal authority that guards at DOE facilities have long had to use their weapons to prevent sabotage and theft or diversion of special nuclear material. We have not gone so far, however, as to recommend that the guards should be federal employees.

As announced soon after the terrorist attacks of September 11, the NRC has commenced a reevaluation of the NRC's safeguards and physical security programs. The federal role in providing security at these facilities will be one of the questions taken up during the review, and we will be consulting other agencies with relevant jurisdictions, especially the new Office of Homeland Security, as we consider this question. At this point, any comment on the outcome of the discussions would be inappropriate.

With respect to restricting air space, I note that the Federal Aviation Administration (FAA) issued a Notice to Airmen (NOTAM !FDC 1/0617, September 28, 2001), which stated that "to the extent practicable, pilots are advised to avoid the airspace above, or in proximity to, sites such as nuclear power plants, power plants, dams, refineries, industrial complexes, and other similar facilities." On October 17, 2001, following the receipt of a threat directed against the Three Mile Island nuclear plant near Harrisburg, PA, the FAA, through a coordinated effort with the NRC and other Federal agencies, took actions to restrict airspace further, including ordering Temporary Flight Restrictions and airport runway closures. Although the threat was later determined to be non-credible, it demonstrated the Federal government's ability, through a coordinated effort among multiple agencies, to take the prompt and prudent actions necessary to protect nuclear facilities. Subsequently on October 30, 2001, in response to warnings of an escalated threat environment, the FAA issued temporary flight restrictions over nuclear sites. In its NOTAM (!FDC 1/1763, later updated by !FDC 1/1979, November 2, 2001), the FAA temporarily prohibited all general aviation flights from operating within a 10 nautical mile radius of and below 18,000 feet (mean sea level) over nuclear sites.

As you note, section 108 of the Atomic Energy Act gives the Commission the authority to enter into and operate nuclear power plants upon a Congressional declaration of war or national emergency. This authority has never been exercised, perhaps in recognition that licensees are best suited to operate and maintain nuclear power plants under normal and emergency conditions. In any event, the underlying purpose of the provision appears to have been to ensure the availability of nuclear material and electric power generation. Although we have not examined the provision in detail, reliance on the provision to "federalize" plant security forces would be problematic under current circumstances. In addition, whether such a step should be taken raises a number of significant policy issues, such as the command and control of such a force and the compensation and funding of the force. Nonetheless, the Commission is confident that substantial protection is being provided to plants through the heightened measures taken by licensees and through the Commission's coordination with other civilian and defense authorities.

The Commission appreciates your interest in its activities. If you have additional questions, please do not hesitate to contact me.

Sincerely,

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Richard A. Meserve