

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Sep 17, 2007 09:12

PAPER NUMBER: LTR-07-0610

LOGGING DATE: 09/13/2007

ACTION OFFICE: EDO

To: Miller, FSME

cys: EDO
DEDMRS

AUTHOR: Joel Lubenau

AFFILIATION: PA

ADDRESSEE: Carl Levin

DEDR

DEDIA

AO

OCA

Rakovan

Diaz-Toro

SUBJECT: Comments on 8/10/07 letter from Paul Schmidt concerning safety of radioactive materials

ACTION: Information

DISTRIBUTION: RF

LETTER DATE: 09/10/2007

ACKNOWLEDGED No

SPECIAL HANDLING: Made publicly available in ADAMS via EDO/DPC

NOTES:

FILE LOCATION: ADAMS

DATE DUE:

DATE SIGNED:

JOEL O. LUBENAU
Certified Health Physicist

89 S. Heck Road
Lititz, PA 17543-8560
U.S.

Tel: 717-625-4854

email: JL1016441@dejazzd.com

September 10, 2007

The Honorable Carl Levin
Chairman, Senate Permanent Subcommittee on Investigations
The Honorable Norm Coleman
Ranking Member, Senate Permanent Subcommittee on Investigations
199 Russell Senate Office Building
Washington DC 20510

Dear Senators Levin and Coleman:

May I offer the following comments on the August 10, 2007 letter addressed to Senator Levin from Paul Schmidt, Manager of the Wisconsin radiation protection program, writing as Chairman of the Organization of the Agreement States (OAS). The letter followed the hearing held by the Senate Permanent Subcommittee on Investigations July 12th on the GAO report of its "sting" operation that would have enabled fraudulent procurement of radioactive material. A short biography for myself is attached.

The OAS' opposition to three key provisions contained in the Nuclear Regulatory Commission (NRC) staff's proposed response to the GAO report (SECY-07-0147) are troubling. The OAS flatly states that the prevention of malevolent uses of radioactive material is a law enforcement matter that is fundamentally incompatible with the agreement states' regulatory frameworks which are geared toward public health. This seems inconsistent with the OAS' August 31, 2004 letter to Sen. Inhofe asking that agreement state resources be utilized for inspection and enforcement of enhanced security measures. It also calls into question the wisdom of the NRC's decision to change the basis of the national source tracking of sealed sources from promotion of the common defense to protecting the public health and safety. The Commission divided on the matter with the late Commissioner McGaffigan and Commissioner Jaczko dissenting. Among the issues concerning them were budgetary implications for the states.

As the OAS points out, the NRC and the agreement states have a working collaborative relationship that includes consultation by NRC scientific and regulatory staff with the states' regulatory staff. The NRC consulted with representatives of the agreement state radiation control programs on the national source tracking system including the change in the basis for the rulemaking. As in the case of the Commission vote, the eleven agreement states that commented on the proposed change split, six in favor, five opposed. The main reason for the states opposing the change was resources.

The agreements with the NRC enabling states to assume under their own authority regulation of radioactive material for health and safety are signed on behalf of the states by their governors. Involving the agreement states in federal programs developed to address national security concerns about radioactive material is a wise step given the need to ensure that security measures do not conflict or compromise radiation health and safety and vice versa. Doing so, however, has state budgetary consequences especially when it comes in the form of unfunded federal mandates. Additionally, state agencies other than the radiation control programs may be involved. For these reasons, the NRC should consult with the governors of the agreement states in this matter.

Underlying the question of the states' role in enhancing security of radioactive material are others:

- A principle consequence of radiological terrorism is psychosocial effects.¹ Another is economic damage.² Do these consequences come under the rubric of public health and safety under *state* laws?
- The NRC does not use these consequences as its basis for prioritizing sources for enhanced security measures. Should it do so?

Thanking you in advance for your consideration of these comments,

Sincerely

Joel O. Lubenau, CHP

Attachment: As stated

cc w/attachment:

✓The Honorable Dale E. Klein, Chairman
U.S. Nuclear Regulatory Commission

The Honorable Tim Pawlenty, Chair
National Governors Association

Paul S. Schmidt, Chair
Organization of Agreement States

¹ National Council on Radiation Protection and Measurements, "Management of Terrorist Events Involving Radioactive Material," NCRP Report No. 138 (October 2001).

² C. D. Ferguson & J. O. Lubenau, "Securing U.S. Radioactive Sources," *Issues in Science and Technology* 20:67-73 (Fall 2003).

Certified Health Physicist

**89 S. Heck Road
Lititz, PA 17543-8560, US**

Tel 717-625-4854

email JL1016441@dejazzd.com

Joel Lubenau graduated in 1961 from The Cooper Union receiving a Bachelor of Civil Engineering degree. From 1963 through 1965 he studied at Rutgers University's Nuclear Science Center and Brookhaven National Laboratory as a U.S. Public Health Service Fellow, receiving a Master of Science in Radiological Health.

In 1961, after a short term in the private sector as a civil engineer, Joel accepted a Commission in the U.S. Public Health Service (USPHS) and began his career as a health physicist. Following graduate school, he joined the Pennsylvania radiation control program, where he became chief of the Division of Radiation Control. He then returned to active duty in the USPHS with the rank of Commander and branch chief at the FDA Bureau of Radiological Health's Winchester Engineering and Analytical Center. In 1973, he joined the Atomic Energy Commission where for many years he managed the Commission's Agreement State Program. Beginning in 1992, he served as a Technical Assistant to Nuclear Regulatory Commission Commissioner E. Gail de Planque and later as Senior Assistant to Chairman Greta Joy Dicus, retiring from government service in 1999.

Joel has been an Associate Editor of *Operational Radiation Safety* and editorial reviewer for *Health Physics* and is an adjunct member of the National Council on Radiation Protection and Measurements and Fellow of the Health Physics Society. Now a consultant, he focuses on security of radioactive sources and emergency response planning for radiological terrorism events. His clients include the International Atomic Energy Agency (IAEA), Department of Energy, National Council on Radiation Protection and Measurements, and the Monterey Institute's Center for Nonproliferation Studies. In 2002, he assisted senior staff of the Senate Foreign Relations Committee in its preparation for the committee's hearings on nuclear and radiological terrorism. He has been an invited speaker and participant in the IAEA international conferences on radioactive material security in Dijon, France in 1998 and Vienna, Austria in 2003 and an invited contributor to the IAEA Bulletin. In 2007, he provided testimony on U.S. international efforts to improve radioactive source security to the Senate Subcommittee on Oversight of Governmental Management, the Federal Workforce and the District of Columbia and assisted staff of the Senate Permanent Subcommittee on Investigations in its preparation for its hearing on vulnerabilities of the NRC licensing system for radioactive sources. An author, co-author, contributor and editor of over 60 publications, recent articles include "Securing U.S. Radioactive Sources," in the Fall 2003 *Issues in Science and Technology*. "Street Smarts" in *Health Physics Society Newsletter*, February 2004 and "Exporting Radioactive Sources: Do It Right," a guest editorial in the August 2004 *Operational Radiation Safety* supplement to *Health Physics*, and "Security of Radioactive Sources in the United States" in the July 2004 *NIS Export Control Observer*.