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FYI

TENNESSEE DEPARTMENT OF HEALTH AND ENVIRONMENT

Bureau of Environment
T.E.R.R.A. BUILDING
150 NINTH AVENUE NORTH
NASHVILLE, TENNESSEE 37219-5404

April 26, 1990

The Honorable John Glenn
Senator
Hart Building, Room 503
Washington, DC 20510

Dear Senator Glenn:

I have written you several times in the past several years regarding your efforts to promote responsible action by the Department of Energy (DOE) in the operation of its facilities. This time I am writing you to urge caution in the support of the Clean Air Act provisions relative to nuclear emissions.

While you apparently believe the Environmental Protection Agency (EPA) proposal will provide better or greater protection than the current Nuclear Regulatory Commission (NRC) standards, I do not believe that is correct. First, the E.P.A. proposal does not address all pathways of exposure, thus, their standard while being a lower number may actually allow some (or many) individuals to receive greater exposures from the radioactive emissions. This is a serious technical flaw in the EPA standard and one I find hard to ignore. The NRC addresses all pathways of exposure from an air emission. The second problem is one of the point of implementation. The NRC requires its standard be met at the boundary of the licensees restricted area and requires the dose be limited as if an individual were present at all times at that nearest point. For the EPA the point of exposure is at the nearest residence. Thus, a facility could actually be allowed to release much greater amounts of radioactive material under the E.P.A. scenario. The E.P.A. scenario also can create problems for facilities maintaining compliance if they are in a growth area where the site of the nearest resident may be changing frequently.

I am very concerned that without understanding the complete facts changes will be made that may be substantially detrimental to radiation protection in the U.S. As a health physicist, I am also concerned that we are not pursuing a national policy that will continue and expand the protection presently afforded by the NRC, e.g., the recent attempts to control various aspects of the Department of Energy facilities under E.P.A. or to establish another agency (Board) to oversee (regulate) DOE. DOE's radiation activities should be regulated by the N.R.C. just as anyone else's activities are.

The Honorable John Glenn, Senator
April 26, 1990
Page 2

Based on my over 20 years of experience and considerable training, I believe the NRC regulations provide the best comprehensive protection. I would urge you to join me and the Conference of Radiation Control Program Directors in urging the establishment of the Nuclear Regulatory Commission as the radiation control agency for all Department of Energy facilities. I hope to contact you further on this.

Sincerely,

Michael H. Mobley
Director
Division of Radiological Health
Commissioner, Southeast Low-Level Radioactive Waste Compact
Chairman-Elect, Conference of Radiation Control Program Directors

MHM/E4150110/D4L&M

cc: Senator Albert Gore, Jr.
Charles Hardin, Executive Director, Conference of Radiation Control
Program Directors
Robert Owen, Administrator, Ohio Radiological Health Program

Radionuclides - Simpson.

EPA would have veto
authority over phase of studies.

→ Negative impact on
Nuclear medicine?

→ Gov't on feds for 13 yrs &
nuc. medicine hasn't been
pulled out.

Baucus & Mitchell v.



TENNESSEE DEPARTMENT OF HEALTH AND ENVIRONMENT

Bureau of Environment
T.E.R.R.A. BUILDING
150 NINTH AVENUE NORTH
NASHVILLE, TENNESSEE 37219-5404

**PHOTOCOPY
PRESERVATION**

April 2, 1990

The Honorable Albert Gore, Jr.
United States Senate
393 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Gore:

I have recently become aware of some mis-information you may have received concerning the Clean Air Act Amendments (S.1630). You have been informed that the Simpson Amendment would preempt the states' ability to regulate the emission of radioactive air pollutants. That is not true. The Simpson amendment does address an area of duplicate coverage in the federal radiation regulatory scheme. I urge you to support the inclusion of this amandatory language. I have attached a copy of the letter expressing the opinion of the Conference of Radiation Control Program Directors. This group represents all the state radiation control agencies in the nation.

It is very interesting to note that the EPA proposed NESHAP does not address the exposure of people from the direct radiation from a radioactive plume. This is a major technical error or deficiency.

The Simpson Amendment had been incorporated into the bill as Section 303, which I understand was deleted by floor action. This provision must be reinstated to insure continued protection of the public.

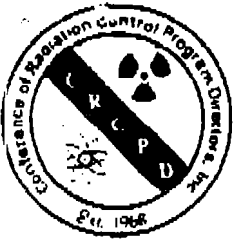
Sincerely,

Michael H. Mobley
Director, Division of Radiological Health
Commissioner, Southeast Low-Level Radioactive Waste Compact
State Liaison, Nuclear Regulatory Commission

MHM/E4040064/L&M

Attachment

cc: Ben Smith
Mike Pearigen



CONFERENCE OF RADIATION CONTROL PROGRAM DIRECTORS, INC.

P.O. Box 14690, Baton Rouge, Louisiana 70898-4690

February 5, 1990

PHOTOCOPY PRESERVATION

The Honorable George Mitchell
President, United States Senate
SR-176 Russell Senate Building
Washington, DC 20510-1902

Dear Senator Mitchell:

This letter is written in reference to the Simpson Amendment to Senate Bill 1630, a Bill to amend the Clean Air Act.

On behalf of the Executive Board of the Conference of Radiation Control Program Directors, Inc. (CRCPD), I should like to provide comments on the referenced Bill. The CRCPD is an organization made up of the radiation control officers and staffs in each of the fifty states, the District of Columbia, and Puerto Rico.

Of particular interest to the CRCPD are the provisions of the Bill which would amend the Clean Air Act to eliminate the duplicative regulation, by both EPA and NRC, of radionuclide emissions from facilities licensed by the NRC and the Agreement States, as authorized under Section 274 of the Atomic Energy Act.

The members of the CRCPD have, for many years, expressed concern about too many federal agencies "having their hands" in radiation protection matters. Multi-federal agencies have resulted in confusion, duplicative effort and, in some cases, direct conflict in efforts to protect the public health and safety of our citizens. In most cases, this duplicative effort has resulted in a great cost, both to the regulatory agencies and to the affected parties, with little or no additional protection of the public health and safety.

As a result of this concern for duplicative and costly multi-federal regulation in areas of radiation protection, the Executive Board of the CRCPD supports the provisions contained in the Simpson Amendment to Senate Bill 1630 which would remove from EPA the regulation of radionuclide emission for facilities licensed by the NRC and the Agreement States. The Executive Board believes that the present regulations for radionuclide emissions to the air, as authorized by the Atomic Energy Act, and which are enforced by the NRC and the Agreement States, are adequate to protect the public health and safety of our citizens. Our position on this matter is supported by the belief that both the NRC and Agreement States will enforce the concept of keeping radiation exposure to levels which are "As Low As Reasonably Achievable" (ALARA).

The Honorable George Mitchell
February 5, 1990
Page 2

**PHOTOCOPY
PRESERVATION**

We commend the Congress in taking steps to reduce multi-federal agencies' regulation of radiation protection matters. We recommend that the Congress give even further consideration to the reduction of multi-federal agency jurisdiction. We also suggest that consideration be given to creating a single federal radiation protection agency, transferring the authority and responsibilities from the many agencies now in existence to a new agency. A single federal agency having total responsibility for all radiation protection matters would reduce confusion, duplication and direct conflicts which now exist in the federal government. A single agency would also provide more timely decisions on radiation protection matters, ultimately providing better protection for the citizens of the United States of America.

Thank you for considering the views of the Executive Board of the Conference. If I, or any other member of the Board, may be of assistance in providing testimony or further information on this matter, please feel free to contact me.

Very truly yours,

Original Signed By

William H. Spell, Chairman

WHS/CMH/whs

cc: Senator John Glenn

343. 32 - 25

**PHOTOCOPY
PRESERVATION**

TIME SENT: 9:25

Tennessee Department of Health & Environment

BUREAU OF ENVIRONMENT

T.E.R.R.A. Building
150 Ninth Avenue North
Nashville, TN 37219-5404

FAX PHONE NUMBER: 615/741-4608

F A C S I M I L E T R A N S M I S S I O N S H E E T

DATE SENT: 4/3/90 NUMBER OF PAGES: 4 (Including
Cover Sheet)

TO: Senator Albert Gore Jr PHONE NUMBER: 202 224 4949

ADDRESS: 393 Russel State Ofc Bldg FAX NUMBER: 202 224 0580
Washington, DC

FROM: Michael Mobley PHONE NUMBER: 615 741 7812

If the following message is received poorly, or if verification
is needed, please call: Theresa Roper
at 615/741- 7812.

SPECIAL INSTRUCTIONS: _____

April 2, 1990



Dear Senator:

We have come to understand that one or more amendments will be offered to S. 1630 which have as their intent the weakening of regulation of radioactive air emissions. As recently as March 7 of this year the Senate voted 61 to 36 to reject such weakening of existing law. We urge you to reaffirm that vote and defeat any attempts to revisit this issue.

In the previous attempt, Senator Alan Simpson introduced provisions which would have allowed NRC to preempt states and EPA in regulation of radionuclides. Senators John Glenn and John Heinz offered an amendment which stripped the Simpson language and returned S. 1630 to current law.

New amendments may be offered by Sen. Simpson or others which would allow EPA to preempt state regulation of radioactive air emissions and would hinder or block the implementation of EPA's air emissions standard.

- o States have used their Clean Air Act authority. Three states have drafted standards under the CAA to regulate radionuclides. Five others have such regulations under consideration.
- o No state has ever used its environmental protection authority irresponsibly.
- o The EPA standard, promulgated in December of 1989, is clearly more protective of public health than the standard of the NRC under Atomic Energy Act authority. The NRC standard was passed in the early sixties, and does not reflect more recent understanding of the dangers of low levels of radiation exposure. The NRC standard allows a dose to the public from 6,000 NRC licensees of 500 millirem per year (risk of 140 in 10,000 additional cancer deaths). The EPA standard allows a dose of only 10 millirem per year (3 in 10,000 additional cancer deaths).
- o The Clean Air Act standard requires more consistent and frequent reporting of emissions than the NRC standard. EPA requires annual reporting for all facilities subject to the standard. NRC reporting requirements are variable and in some cases none-existent.
- o The EPA standard is not burdensome to industry. Evidence from EPA contractor studies indicates that there is a very small time requirement for implementing and complying with the standard. Some licensees have indicated that the EPA COMPLY program is easier to use than the NRC reporting system.

o There is a process for examination of the appropriateness or adequacy of standards under the Clean Air Act. A reconsideration of the EPA standard is currently under way wherein concerns over unnecessary burden or over adequacy of protection can be addressed. Congress serves no good end by needlessly confusing, delaying or making more difficult implementation of this essential public protection.

The National Academy of Sciences has recently reported that exposures to low levels of radiation are 3 to 4 times as dangerous as had been previously thought. Now is not the time to weaken regulation of these dangerous materials.

We urge you to reaffirm the role of the states in protecting the health of their citizens. We urge you to reaffirm the role of EPA in regulating hazardous air pollutants. We urge you to reject, once again, Sen. Simpson's, or any other such weakening amendments.

Leon Lowery
Legislative Representative
Environmental Action

James Beard
Director
Nuclear Weapons Project

Stephen Schwartz
Legislative Coordinator
Nuclear Campaigns
Greenpeace USA

Diane D'Arrigo
Director
Radioactive Waste Project
Nuclear Information and Resource
Service

Ken Bossong
Public Citizen

Bill Magavern
Staff Attorney
U.S. Public Interest Research
Group

March 7, 1990

Dear Senator,

We are writing to seek your support for an amendment to be offered by Senator John Glenn to strengthen the Clean Air Act Amendments (S. 1630) by striking language which would substantially weaken the regulation of radioactive air pollutants.

The Glenn amendment would strike language inserted into the Clean Air Act Amendments by Senator Simpson in the Senate Environment and Public Works Committee. Senator Simpson's provision would eliminate current Clean Air Act authority to regulate radioactive air emissions from Nuclear Regulatory Commission-licensed facilities.

Supporters of the Simpson amendment argue that the regulation of radioactive air emissions under the Clean Air Act is not needed because the regulation of radionuclide emissions under the Atomic Energy Act is adequate to protect the public health and safety. Simpson amendment supporters also argue that regulating radioactive air emissions under the Clean Air Act places an undue regulatory burden on industry. Neither argument is true.

The Clean Air Act authorizes the Environmental Protection Agency (EPA) to set safety standards for radionuclide releases. In December 1989 EPA issued new standards (40 CFR 61) that set a much safer standard for nuclear emissions than the standards in the Atomic Energy Act.

EPA's Clean Air Act standards limit radiation doses to the public to 10 millirem per year for NRC-licensed facilities. In terms of risk, 10 millirem per year is approximately equivalent to a 3 in 10,000 individual lifetime chance of contracting a fatal cancer.

By contrast, standards issued under the Atomic Energy Act set doses to the public from uranium fuel cycle facilities (i.e. facilities associated with the production of nuclear power) at 25 millirem per year, and at all other NRC-licensed facilities at 500 millirem per year, from air pathway only. The 500 millirem limit under 10 CFR 20 is approximately equal to a lifetime risk of fatal cancer of 140 in 10,000.

In other words, NRC's Atomic Energy Act standard is approximately 50 times higher than the EPA Clean Air Act standard

(500 millirem per year vs. 10 millirem per year) and the risk is approximately 150 times greater. The NRC's standards (10 CFR 20) were developed and published in the late 1950's and, by the NRC's own admission, "have not kept pace with more recent recommendations of scientific organizations to improve overall protection and establish a clear health risk rationale."

The Simpson amendment also threatens states' rights on environmental protection.

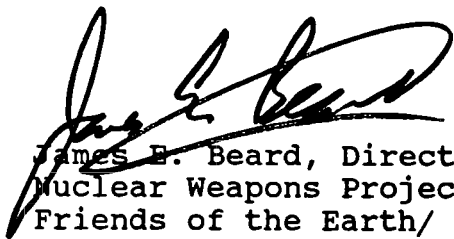
The Clean Air Act authorizes citizens, states and local governments to take legal action when air emission standards are being violated. Under the Atomic Energy Act states and citizens would have no legal recourse to compel regulatory agencies to enforce air emission standards.

The Clean Air Act also authorizes states to adopt and enforce their own emission standards and their own requirements for control or abatement of air emissions. States can set requirements that are more stringent than federal requirements. The Atomic Energy Act does not authorize states to set stricter standards for radionuclide air emissions. In fact, a United States Supreme Court ruling found that the Atomic Energy Act prohibits the states from setting and enforcing stricter standards.

There are over 6,000 NRC licensees. Virtually the entire U.S. population is potentially exposed to radionuclide air emissions from these facilities. As more is learned about radiation exposure, it becomes more and more apparent that we have consistently underestimated the risks involved. Now is not the time for Congress to take a giant step backwards and weaken radiation controls.

We urge your support for the Glenn amendment to preserve Clean Air Act regulation over radioactive air emissions.

Sincerely,


James E. Beard, Director
Nuclear Weapons Project
Friends of the Earth/
Environmental Policy Inst.


Kevin Knoblock
Legislative Director
Union of Concerned
Scientists


David Lewis
Legislative Director
Physicians for Social
Responsibility

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JO ANNE BARNHART, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

Have
call

February 23, 1990

Dear Colleague:

We are writing to seek your support for an amendment we plan to offer to the Clean Air Act that would preserve the existing rights of the Environmental Protection Agency and states to regulate radionuclide emissions at Nuclear Regulatory Commission facilities. Those rights would be removed in section 303 of the current Clean Air Act legislation (S. 1630) now before the Senate.

During the markup of S. 1630 in the Environment and Public Works Committee, an amendment offered by Senators Breaux and Simpson was adopted which gives the Nuclear Regulatory Commission the exclusive right to regulate radionuclide emissions under Sections 112 and 116 of the Clean Air Act. Unfortunately, this would have the effect of removing existing rights of EPA and states to regulate radioactive air emissions at NRC facilities.

If the NRC is not adequately regulating radioactive air emissions, then the role of states and the EPA are essential safeguards. States and the EPA have a much broader concern than the NRC, and must assure that the cumulative effect of all radioactive sources are not risking the health of American citizens. Moreover, EPA's role is essential in assuring that state regulations can be federally certified to avoid confusion and to assure that the regulations are consistent with Clean Air Act standards.

Recently, 20 state attorneys general have written to Senator Mitchell requesting that the Breaux/Simpson amendment be removed. According to their letter, this provision not only severs their existing right under the current Clean Air Act, but also may adversely affect the ability of states to regulate environmental restoration activities under the Superfund Act (see attachment).

The Breaux/Simpson amendment is not an appropriate way to address the long-term structural issue of the role that states play in environmental regulation. The issue of state regulation of radionuclides has a long and important history. In 1977, the Congress explicitly gave states authority over radionuclide emissions in the current Clean Air Act, after several years of public controversy. Title V of S. 2006 --

The Department of the Environment Act -- which the President supports, creates a special commission to address these kinds of issues.

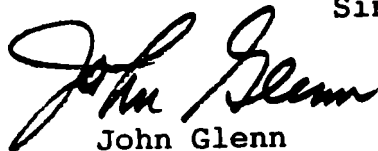
Also, the long-term implications of the Breaux/Simpson amendment are not limited to reducing paperwork for NRC licensees. While we are sympathetic to the need to reduce the burdens of dual regulation, this problem can be solved without having to permanently sever the authority of the EPA and states. What would happen if the NRC does not adequately control emission problems at nuclear facilities in the future, if there are no state and EPA safeguards? As past problems at NRC facilities show, this is not an abstract issue.

It is said that the Clean Air Act is redundant because radiation standards set under the Atomic Energy Act are equally protective. Unfortunately, this has not proven to be correct. Currently, under the Atomic Energy Act, the public radiation exposure limit at NRC's 6,000 radioactive by-product, source, and special nuclear material facilities are twenty times higher than the limit set for NRC's 140 uranium fuel cycle operations. Under the Clean Air Act, all NRC-licensees would have to meet even more stringent standards than those required for uranium fuel cycle facilities covered by the Atomic Energy Act (see attached fact sheet).

Moreover, this is not the time to reduce the regulation of radioactive emissions at NRC facilities -- particularly since the National Academy of Sciences has recently reported that the risks of dying from radiation-induced cancer appear to be three to four times greater than previously assumed.

We hope that you can join us in assuring that there are adequate safeguards for radiation protection at NRC facilities. Please contact Bob Alvarez (224-4751) or Jerry Dorian (224-2364) about this important effort.

Sincerely,


John Glenn


John Heinz

Attachments

AMENDMENT NO. _____

Calendar No. _____

Purpose: To authorize States to participate in certain regulatory actions.

IN THE SENATE OF THE UNITED STATES--101st Cong., 2d Sess.

S.1630

To amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by :

Viz:

1 On page 381, beginning with line 10, strike out all through line 2 on page

2 382. (To delete Section 303, S.1630.)

3 Substitute for Section 303 of S.1630 the following:

4 SEC. 303. PRESERVATION OF AUTHORITY OF STATES AND

5 POLITICAL SUBDIVISIONS.

6 Notwithstanding any other provision of the Clean Air Act, or any other law, the

7 regulation by the Nuclear Regulatory Commission, or by any other Federal

8 Agency, of radioactive emissions shall not affect, modify or preclude the

9 traditional authority of any state or political subdivision thereof to adopt or

10 enforce any requirement respecting the control of such emissions, provided only

11 that such requirement is not less stringent than any federal standard.

WHY THE GLENN-HEINZ AMENDMENT ON RADIOACTIVE EMISSIONS IN THE CLEAN AIR ACT IS NECESSARY

The current Senate Clean Air Act bill (S. 1630) contains a provision (Section 303) which would eliminate the authority of states and the Environmental Protection Agency (EPA) to regulate radioactive emissions at Nuclear Regulatory Commission (NRC) facilities and would leave regulation of radioactive air emissions to the Nuclear regulatory Commission under the Atomic Energy Act. The Glenn-Heinz amendment would remove this provision from S. 1630 and explicitly preserve states rights for the following reasons:

ATOMIC ENERGY ACT STANDARDS FOR NRC FACILITIES ARE LESS PROTECTIVE THAN CLEAN AIR ACT STANDARDS

EPA's standard under the Clean Air Act (CAA) limits emissions of hazardous radioactive air pollutants to a dose of 10 millirem per year to the most exposed individual. That translates into a risk of three additional fatal cancers per 10,000 people so exposed over their lifetimes.

Under the Atomic Energy Act (AEA), two standards have been issued. One is for uranium fuel cycle facilities (reactors, fuel fabrication etc.) which the NRC promulgated in 1980. This standard, which applies to 140 facilities, limits emissions to 25 millirems per year which is two and a half times higher than the CAA standard.

The vast majority of NRC licensees, some 6,000 of them, are governed by an Atomic Energy Act standard set in 1960 which allows the public to be exposed to 500 millirems per year -- fifty times higher than the CAA standard. That translates into a risk of 140 excess fatal cancers per 10,000 people. (See "EPA Answers to Questions from Senator Wirth" February 6, 1990.)

THE CLEAN AIR ACT STANDARD DOES NOT IMPOSE A SIGNIFICANT REGULATORY BURDEN

The EPA in its promulgation of the CAA standard for radionuclides, was required to analyze the regulatory burden of this provision. The EPA found that "The regulations do not significantly increase prices or production costs... the regulations do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets." (Federal Register Vol. 54, No. 240)

As to the rule's effect on small licensees -- such as hospitals -- the EPA has certified that "this rule will not have a significant economic impact on a substantial number of small entities." (Federal Register Vol. 54, No. 240)

A study done for EPA on the regulatory burden on NRC licensees, and based on actual field trials of the system, found that compliance can be achieved with minimal investment of time. An initial set-up time would be 8 to 16 hours and yearly compliance of EPA CAA standards would require 2 to 6 hours. (Background Information Document on the Reconsideration of 40 CFR 41. # 68 F90170, February 13, 1990.)

**STATES HAVE RESPONSIBLY EXERCISED THEIR AUTHORITY
UNDER THE CLEAN AIR ACT**

The states of Washington, Illinois and Mississippi have exercised their CAA authority to promulgate standards for radionuclide emissions. The Washington standard provides for a slightly stricter than federal CAA standard for radiation exposure to the thyroid. Five other states including Alabama, Arizona, Colorado, Florida and Massachusetts have such standards under consideration.

As to states using authority irresponsibly, there is no record to support such a prediction. States have not abused their authority granted to them under other statutes (RCRA, Clean Water Act, CERCLA etc.) or under the Clean Air Act.

States do have an appropriate role in protection of public health of their citizens. The Clean Air Act recognizes this.



GAC

STATE OF NEW YORK
DEPARTMENT OF LAW
120 BROADWAY
NEW YORK, N. Y. 10271

ROBERT ABRAMS
ATTORNEY GENERAL

January 31, 1990

Honorable George Mitchell
United States Senate
SR-176 Russell Senate Office Building
Washington, D.C. 20510-1902

RE: S. 1630; Concerning Radionuclides Amendment

Dear Senator Mitchell:

This letter, delivered to you on behalf of the undersigned State Attorneys General, is to urge deletion of a provision of S. 1630 which, if passed into law, will prohibit regulation of certain radioactive air emissions by the United States Environmental Protection Agency (EPA) and severely limit State authority to adopt similar regulations. As indicated by your comments in the Committee Report of S. 1630, you hold similar concerns with respect to the effect of this provision.

In the Clean Air Act of 1977, Congress directed the EPA under Section 122 to consider regulation of radioactive air emissions from all sources including those regulated or licensed by the Nuclear Regulatory Commission (NRC). Last year, in response to a court order, the EPA promulgated regulations under Section 112 of the Act to control radionuclide emissions as a hazardous air pollutant. The Act called for coordination of efforts between the EPA and the NRC in the regulation of these emissions.

In November, as the Senate Environment and Public Works Committee was considering amendments to the Clean Air Act, an amendment to S. 1630 was offered by Senator Alan Simpson and passed by voice vote. That amendment proposes to exempt radioactive air emissions associated with sources regulated or licensed by the NRC or an NRC "agreement State" from any EPA regulations, including recently promulgated radionuclide standards, in favor of exclusive regulation by the NRC pursuant to the Atomic Energy Act. The amendment was presented purportedly to avoid dual regulation by the EPA and the NRC. The actual effect of the amendment, however, is quite different.

First, if this amendment is left intact, air emissions from radioactive materials under NRC jurisdiction will no longer be subject to EPA regulations for radionuclides. Specifically, these sources will be limited only by the NRC's radionuclide emissions standard which can be 50 times less stringent than EPA's newly promulgated standard.

Second, by transferring all authority over these emission sources to the NRC, the States will be preempted from establishing their own more stringent standards for radioactive air emissions. Under Section 116 of the Clean Air Act, State authority to adopt stricter air emission standards clearly has been retained. There is no similar provision in the Atomic Energy Act. That Act has been found by the United States Supreme Court to preempt State regulation of radiation hazards. Therefore, the amendment in question would effectively prevent the States from exercising any control over harmful radioactive air emissions from sources regulated by the NRC.

Finally, this amendment may have an adverse effect on the cleanup of radioactive contamination pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (the Superfund Act). The Superfund Act provides a mechanism for the cleanup of all pollutants classified as "hazardous substances." Section 101(14) of the Act includes, within the definition of "hazardous substances," any hazardous air pollutant regulated under Section 112 of the Clean Air Act. The amendment will eliminate radioactive emissions produced by NRC regulated sources from the definition of hazardous air pollutants in the Clean Air Act and thus remove from the scope of the Superfund Act any radioactive air, soil or water contamination caused by these sources.

As you can see, the amendment, by removing both EPA and State authority to regulate significant radioactive air pollution, would be an unfortunate development. We encourage action on the floor of the Senate to delete this amendment.

Senator George Mitchell
Page 3

Thank you for your continuing efforts to assure that our environment remains safe for future generations.

Respectfully,

ROBERT ABRAMS
Attorney General of
New York

JOHN K. VAN DE KAMP
Attorney General of
California

DUANE WOODWARD
Attorney General of
Colorado

CLARINE NARDI RIDDLE
Attorney General of
Connecticut

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Attorney General of
Oregon

ERNEST D. PREATE, JR.
Attorney General of
Pennsylvania

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Attorney General and Reporter
of Tennessee

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Texas

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Attorney General of
Vermont

KENNETH O. EIKENBERRY
Attorney General of
Washington

DONALD J. HANAWAY
Attorney General of
Wisconsin

cc: Senator John Glenn

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

February 20, 1990

The Honorable Charles Burson
Attorney General of Tennessee
450 James Robertson Parkway
Nashville, Tennessee 37219

RE: Regulation of Radionuclides under the Clean Air Act

Dear Attorney General Burson:

We were most disturbed to obtain copies of a widely-distributed letter from yourself and a number of other Attorneys General to Senator Mitchell regarding the provision in S. 1630, the Clean Air Act Amendments of 1989, which would eliminate the dual regulation of radionuclides under both the Atomic Energy Act and the Clean Air Act. The letter contains several errors regarding the effect of this provision, and we would like to take the opportunity to clear up some of the confusion which obviously has arisen.

First, your letter asserts that the amendment will "prohibit regulation of certain radioactive air emissions by the United States Environmental Protection Agency (EPA)," and that it proposes to "exempt radioactive air emissions...from any EPA regulations...in favor of exclusive regulation by the NRC [Nuclear Regulatory Commission] pursuant to the Atomic Energy Act." The letter makes similar assertions elsewhere. These assertions are incorrect.

Although the radionuclides provision does eliminate the EPA's duplicative authority under the Clean Air Act to promulgate emission standards for NRC licensees, it does not in any way alter or affect the EPA's basic role under the Atomic Energy Act to establish generally applicable environmental standards for the release of radionuclides from NRC-licensed facilities. As the Committee report on the bill states, the EPA retains all of its present Atomic Energy Act authority to establish enforceable standards for NRC-licensed facilities.

Second, the letter erroneously states that NRC-licensed "sources [of air emissions of radioactive materials] will be limited only by the NRC's radionuclide emissions standard which can be 50 times less stringent than EPA's newly promulgated

standard." To the contrary, EPA has stated that its new standard was promulgated at the 10 millirem level because that was the standard which was already being met by all NRC licensees regulated under the Atomic Energy Act and was the standard which EPA determined to be adequate to protect the public health with an ample margin of safety. Thus, the provision in the Committee bill will not result in any reduction whatsoever in any safety standards.

Third, your letter incorrectly asserts that the amendment would "effectively prevent the States from exercising any control over harmful radioactive emissions from sources regulated by NRC." This assertion simply ignores the fact that the amendment preserves the important and significant authority of the states to enter into agreements with the NRC to assume regulatory authority for many materials licensees. The states will also retain their traditional authority to regulate the economic aspects of nuclear power operation.

The EPA and the NRC consistently have stated that the regulatory structure under the Atomic Energy Act--whereby EPA sets the standards and the NRC enforces those standards for NRC licensees--is adequately protecting the public health and safety. Nonetheless, as the EPA stated in its recent radionuclide rulemaking, "[w]hile the level of health protection achieved under the NRC standard is generally comparable to that required by EPA's rule, the two standards are very different in form, and the means of demonstrating compliance with each standard impose significantly different regulatory requirements."

In the absence of any ascertainable benefits to public health from additional regulation under the Clean Air Act, the Committee on Environment and Public Works, the EPA, and the NRC see no need to impose another set of costly regulatory requirements upon American industry, the medical community, and the consumer. The Committee and both agencies support elimination of duplicative regulation under the Clean Air Act.

Moreover, the actions of the states themselves appear to support the position that the Atomic Energy Act standards for NRC licensees are adequate. No state, including your State of Tennessee, has issued a more stringent standard for radionuclides under its existing Clean Air Act authority. If the State of Tennessee believed that the federal regulations were not adequately protecting the public from radioactive air emissions, and that more stringent regulation under the Clean Air Act is imperative for health and safety reasons, it is unclear as to why Tennessee has failed to take such action under its Clean Air Act authority to remove such a perceived threat to the safety of its citizens.

but still
the few who
only require
a better rule

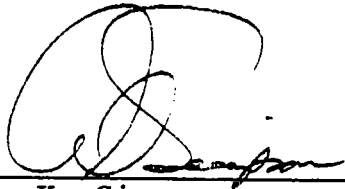
but can't
make
more strict
NRC's rules.

mind? ?

And finally, there is no intent to alter any provisions under the Superfund law regarding the cleanup of radioactive contamination. It is disturbing to hear the "call for action" on the Senate floor regarding a concern that could have been addressed by communication with us, the sponsors of the amendment. However, no attempts were made to contact us on this or any other issue.

We regret that you have chosen to "encourage action on the floor of the Senate" to "delete" a provision which does not do much of which you assert, and which could have been subject to further negotiation with us. Unfortunately, the inaccuracies and misstatements in your letter have only made the resolution of any of your concerns, and of ours, much more difficult.

With best personal regards,



Alan K. Simpson
Ranking Minority Member
Subcommittee on
Nuclear Regulation



John B. Breaux
Chairman
Subcommittee on
Nuclear Regulation

cc: Senator Jim Sasser
Senator Albert Gore, Jr.

ADDITIONAL VIEWS OF SENATOR MITCHELL

I support the Clean Air Act Amendments of 1989, as reported by the Environment and Public Works Committee. The Committee has labored long and hard since 1982 on the public health crisis of air pollution. The Clean Air Act has not been amended since 1977—longer than any of our other environmental statutes. The Act needs modification to keep it current.

The bill is comprehensive. It addresses the problems of acid rain, urban smog and failure of areas to meet national air quality standards, air toxics, municipal incinerators, global warming and chlorofluorocarbon emissions that deplete the earth's protective ozone layer.

The Committee has held 65 days of hearings and 45 days of markup on clean air since 1980. There is a full record of the history of the Committee's clean air activities. After a decade of deliberation, the time has come to act.

The bill reflects the decision of the Committee members to directly address our air pollution problems. This bill makes many tough choices. A timid approach will continue the litigation and delay that occurs under the existing Act, while children and the elderly continue to suffer the adverse health impacts of air pollution.

There is no perfect solution to our air pollution problems. But the quest for perfection has too often been used to justify no action at all. Further delay is not acceptable. According to a draft report, "The Health Costs of Air Pollution", by the American Lung Association, health care costs associated with mobile source emissions may range as high as \$93 billion per year. According to that draft report: "The highest overall estimate from any of the studies reviewed predicted \$432 billion in annual health costs from exposure to sulfate pollution, assuming "worst case" dose-response correlations between sulfate pollution and premature deaths." These are at the upper limits of the cost estimates, but it is significant that any cost estimate would be this high. This legislation, if enacted, would dramatically reduce these health cost estimates.

There is one issue on which I must express my concern. During Committee markup, an amendment to the radionuclide section of the air toxics title was offered and accepted. The authors of that provision states they intended only to avoid dual regulation of the same sources of radionuclides by both Environmental Protection Agency and the Nuclear Regulatory Commission. Both the EPA and the NRC supported this change.

However, one consequence of this change may have been to preempt States from exercising the jurisdiction they had under the Clean Air Act to adopt radionuclide standards that are more protective than those required by the Federal Government. This is because EPA's authority to regulate radionuclides under the Clean

Air Act was eliminated. The Clean Air Act, in this regard, as the legislative history clearly indicates.

Due to the amendment adopted during the markup, the Act only has authority to regulate radionuclides under the Energy Act. Unfortunately, that Act does not preempt States from adopting more stringent standards for radionuclide emissions.

Now is not the time to make such a change. As reported on December 20, 1989, that the Search Council concluded that the risk of cancer exposure may be three to fourteen times that estimated. If the panel's analysis is correct, the Chernobyl nuclear explosion would produce 70,000 cancer deaths, 10 times as many as previously estimated.

Members of the research panel indicate that government standards for radionuclides are needed. If the Federal government fails to take action, States should be barred from adopting more stringent standards.

My position on preemption has been that States should be allowed to exercise their authority to protect the public health. I do not believe that the Federal government has the authority to preempt the public health standards of the States. The level of protection required by the

Air Act was eliminated. The Clean Air Act is not preemptive in this regard, as the legislative history clearly demonstrates.

Due to the amendment adopted during Committee markup, EPA only has authority to regulate radionuclides under the Atomic Energy Act. Unfortunately, that Act is preemptive. The effect of this change is to preempt States from establishing their own standards for radionuclide emissions.

Now is not the time to make such a change. For example, it was reported on December 20, 1989, that a panel of the National Research Council concluded that the risks from low levels of radiation exposure may be three to fourteen times greater than previously estimated. If the panel's analysis is correct, then cancer deaths from the Chernobyl nuclear explosion in the Soviet Union in 1986 would produce 70,000 cancer deaths, rather than the 17,400 previously estimated.

Members of the research panel indicated that this new data may cause government standards for radiation exposure to be tightened. If the Federal government fails to take this step, I do not believe that States should be barred from adopting standards that they believe are needed to protect the public health.

My position on preemption has been clear and consistent. I do not believe that the Federal government should deny States the authority to protect the public health and the environment beyond the level of protection required by the Federal Government.

GEORGE J. MITCHELL.

OF SENATOR MITCHELL

Amendments of 1989, as reported by Works Committee. The Committee in 1982 on the public health crisis of the Act has not been amended since other environmental statutes. The Act is current.

addresses the problems of acid rain, as to meet national air quality standards, global warming and chlorofluorocarbons deplete the earth's protective ozone

5 days of hearings and 45 days of deliberation. There is a full record of the historical activities. After a decade of deliberation.

one of the Committee members to discuss air pollution problems. This bill makes many changes which will continue the litigation and the existing Act, while children and the elderly are most vulnerable to the adverse health impacts of air pollution. As to our air pollution problems. But it has often been used to justify no action is acceptable. According to a draft report, "Pollution", by the American Lung Association, associated with mobile source emissions of 10 million tons per year. According to that draft estimate from any of the studies reveal annual health costs from exposure to a "worst case" dose-response correlation and premature deaths." These are the best estimates, but it is significant that the costs are high. This legislation, if enacted, will increase health cost estimates.

When I must express my concern. During the amendment to the radionuclide section of the bill was passed and accepted. The authors of that bill were only to avoid dual regulation of the radionuclides by both Environmental Protection Agency and the Regulatory Commission. Both the EPA and the Commission.

One of this change may have been to clarify the jurisdiction they had under the radionuclide standards that are more consistent with the Federal Government. This is to regulate radionuclides under the Clean

2/28/90
conf. w/
John Fowey

3/4 of Committee is in favor of Glenn
547-0240

Dec 1988 - 18 amendments voted on

Env't Fed - summer experience for undergrad
DOC → scholarship to study Earth Sci.

Phone conference
w/ John Fowey
2/15

AEA authority →

only applies Uranium fuel cycle
(nuclear power plants) → 25 mrem/yr.

also promulgated are under CAA for
Uranium fuel cycle
→ 10 mrem

* petitions for increased →
Inhouse got these
approved

→ reviews of applicability

NRC under
AEA
500 mrem → all other NRC licenses (6000)
radiopharm mfgs.
low level radioactive
waste

EPAA here is 10 mrem → all sources
NRC → 500 on water
+ 100 on food.

not
backbone
Contractor report re: burden re: deal reg.
\$8-16 hrs to learn / person
yearly reg. to file reports 26.

10 mrem per a tech. burden → facilitate do.
meet this

Brace, Simpson + Bartlett > only ones on
committee still
supportive of exemption

new CAA will have stricter rules
across board.

EPA level = $3/10,000$
if new CAA = 10^{-4} & EPA
will have to write new rules.

these radionuclides will be regulated
under old CAA.

* Glenn
may have agreed to
Hellinghoff DOE's
will as long as
grandfathered

Helling - similar amendment doesn't
deal w/ grandfathering lang.

→ not

Glenn maybe satisfied w/ this, Sen. Brown/Enrinos not:
many other sources w/ this still be
grandfathered?

Everything that not an NRC-licensed or
that have radioactive substances

will
be grandfathered.

not really necessary
@ all, but

phospho-gypsum
phosphates - high uranium
content → pills → v. high
radon emissions (CAA will require
control).

Nuclear waste incinerators → all
covered.

"agreed states" → under AEA - have some ° of
particip w/ NRC
- can't write rules, but have to
be comparable → pretty "have to be same
(preempt).

ALARA - haven't been enforced, no
legal effect
→ CAA = MACT → not so
subjective

5 ppm = a design criterion, not an
emission limit.
accord to engineers this
will be met → no one monitors →
This is a pre-emission, engineers
estimate. gov - construction

call Keith →
 push aside
 call Quinn & Peter
 & professionals

State ability to regulate
 EPA rules → *infern v. NRE* - 500 mem
 state / citizen suits

monitoring of rules → EPA all
 NRC licenses not paid to calculate
 doses to the public -- just
 occupational. (not when this is
 used)

3/10,000 v. 1.4 in 100 lifetime cancer risk

Q = force of ALARA provision

- enforced

- 5 mem. being met?

G = can facilities meet EPA standards?
 - more or less stringent than EPA?

G = where is grandfathering?

AEA - gives EPA authority to promulgate jointly
 applicable rules

Q = what's the problem? - why not
 enforce?

NRC enforces these standards then
 pays.

but fall under & have to file
 all cases.

Q = state agents?

Q = where is grandfathering + Mitchell's study?

371-
 8470
 Quinn
 Office
 371-8401

Mitchell's study
 404



STATE OF NEW YORK
DEPARTMENT OF LAW
120 BROADWAY
NEW YORK, N. Y. 10271

ROBERT ABRAMS
ATTORNEY GENERAL

January 31, 1990

Honorable George Mitchell
United States Senate
SR-176 Russell Senate Office Building
Washington, D.C. 20510-1902

RE: S. 1630; Concerning Radionuclides Amendment

Dear Senator Mitchell:

This letter, delivered to you on behalf of the undersigned State Attorneys General, is to urge deletion of a provision of S. 1630 which, if passed into law, will prohibit regulation of certain radioactive air emissions by the United States Environmental Protection Agency (EPA) and severely limit State authority to adopt similar regulations. As indicated by your comments in the Committee Report of S. 1630, you hold similar concerns with respect to the effect of this provision.

In the Clean Air Act of 1977, Congress directed the EPA under Section 122 to consider regulation of radioactive air emissions from all sources including those regulated or licensed by the Nuclear Regulatory Commission (NRC). Last year, in response to a court order, the EPA promulgated regulations under Section 112 of the Act to control radionuclide emissions as a hazardous air pollutant. The Act called for coordination of efforts between the EPA and the NRC in the regulation of these emissions.

In November, as the Senate Environment and Public Works Committee was considering amendments to the Clean Air Act, an amendment to S. 1630 was offered by Senator Alan Simpson and passed by voice vote. That amendment proposes to exempt radioactive air emissions associated with sources regulated or licensed by the NRC or an NRC "agreement State" from any EPA regulations, including recently promulgated radionuclide standards, in favor of exclusive regulation by the NRC pursuant to the Atomic Energy Act. The amendment was presented purportedly to avoid dual regulation by the EPA and the NRC. The actual effect of the amendment, however, is quite different.

First, if this amendment is left intact, air emissions from radioactive materials under NRC jurisdiction will no longer be subject to EPA regulations for radionuclides. Specifically, these sources will be limited only by the NRC's radionuclide emissions standard which can be 50 times less stringent than EPA's newly promulgated standard.

Second, by transferring all authority over these emission sources to the NRC, the States will be preempted from establishing their own more stringent standards for radioactive air emissions. Under Section 116 of the Clean Air Act, State authority to adopt stricter air emission standards clearly has been retained. There is no similar provision in the Atomic Energy Act. That Act has been found by the United States Supreme Court to preempt State regulation of radiation hazards. Therefore, the amendment in question would effectively prevent the States from exercising any control over harmful radioactive air emissions from sources regulated by the NRC.

Finally, this amendment may have an adverse effect on the cleanup of radioactive contamination pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (the Superfund Act). The Superfund Act provides a mechanism for the cleanup of all pollutants classified as "hazardous substances." Section 101(14) of the Act includes, within the definition of "hazardous substances," any hazardous air pollutant regulated under Section 112 of the Clean Air Act. The amendment will eliminate radioactive emissions produced by NRC regulated sources from the definition of hazardous air pollutants in the Clean Air Act and thus remove from the scope of the Superfund Act any radioactive air, soil or water contamination caused by these sources.

As you can see, the amendment, by removing both EPA and State authority to regulate significant radioactive air pollution, would be an unfortunate development. We encourage action on the floor of the Senate to delete this amendment.

Senator George Mitchell
Page 3

Thank you for your continuing efforts to assure that our environment remains safe for future generations.

Respectfully,

ROBERT ABRAMS
Attorney General of
New York

JOHN K. VAN DE KAMP
Attorney General of
California

DUANE WOODWARD
Attorney General of
Colorado

CLARINE NARDI RIDDLE
Attorney General of
Connecticut

JIM JONES
Attorney General of
Idaho

WILLIAM J. GUSTE, JR.
Attorney General of
Louisiana

JAMES M. SHANNON
Attorney General of
Massachusetts

FRANK J. KELLEY
Attorney General of
Michigan

HUBERT H. HUMPHREY, III
Attorney General of
Minnesota

ROBERT M. SPIRE
Attorney General of
Nebraska

JAMES E. TIERNEY
Attorney General of
Maine

BRIAN MCKAY
Attorney General of
Nevada

ANTHONY J. CELEBREZZE, JR.
Attorney General of
Ohio

DAVE FROHNMAYER
Attorney General of
Oregon

ERNEST D. PREATE, JR.
Attorney General of
Pennsylvania

CHARLES W. BURSON
Attorney General and Reporter
of Tennessee

JIM MATTOX
Attorney General of
Texas

JEFFREY L. AMESTOY
Attorney General of
Vermont

KENNETH O. EIKENBERRY
Attorney General of
Washington

DONALD J. HANAWAY
Attorney General of
Wisconsin

cc: Senator John Glenn

CAROL

FM

TN.

A. Gen.
needs response
R

STATE OF TENNESSEE
Office of the Attorney General



CHARLES W. BURSON
ATTORNEY GENERAL AND REPORTER

JOHN KNOX WALKUP
SOLICITOR GENERAL

450 JAMES ROBERTSON PARKWAY
ATTORNEY GENERAL & REPORTER
NASHVILLE, TENNESSEE 37243-0488

TELEPHONE (615) 741-3461
FACSIMILE (615) 741-2009

PHOTOCOPY
PRESERVATION

JEAN NELSON
CHIEF DEPUTY ATTORNEY GENERAL

DEPUTY ATTORNEYS GENERAL
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JIMMY G. CREECH
CHIEF SPECIAL COUNSEL

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TRANSMITTING 4 PAGES, INCLUDING COVER.

DATE:

Feb. 1, 1990

TO:

Mr. Roy Neal
Administrative Asst.
Senator Albert Gore's Office

FROM:

STATE OF TENNESSEE
ATTORNEY GENERAL & REPORTER



MICHAEL D. PEARIGEN
DEPUTY ATTORNEY GENERAL

COMMENTS:

124 JOHN BEVIER BLDG.
8TH & CHARLOTTE
NASHVILLE, TN 37219
(615) 741-8887

MAILING ADDRESS:
450 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37219-5025

Please be so kind as to bring
the attached letter to Sen. Gore's
attention. Thanks, Mike Pearigen

RUSH HAND DELIVERY TO THE RECEIVER? ☒ YES

SHOULD TRANSMISSION PROBLEMS BE ENCOUNTERED, PLEASE CONTACT
OUR OFFICE AT 615-741-3278.

SENT BY: Atty. General

; 2- 1-90 2:32PM ;

6157412009→

3122241867573;# 2

FROM: NAAG (202) 628-0435

TO: TENNESSEE AG

JAN 31, 1990

2:50PM P.03

**PHOTOCOPY
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STATE OF NEW YORK
DEPARTMENT OF LAW
180 BROADWAY
NEW YORK, N. Y. 10071

ROBERT ABRAMS
ATTORNEY GENERAL

January 31, 1990

Honorable George Mitchell
United States Senate
SR-176 Russell Senate Office Building
Washington, D.C. 20510-1902

RE: S. 1630; Concerning Radionuclides Amendment

Dear Senator Mitchell:

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In the Clean Air Act of 1977, Congress directed the EPA under Section 122 to consider regulation of radioactive air emissions from all sources including those regulated or licensed by the Nuclear Regulatory Commission (NRC). Last year, in response to a court order, the EPA promulgated regulations under Section 112 of the Act to control radionuclide emissions as a hazardous air pollutant. The Act called for coordination of efforts between the EPA and the NRC in the regulation of these emissions.

Senator George Mitchell
Page 2

PHOTOCOPY PRESERVATION

In November, as the Senate Environment and Public Works Committee was considering amendments to the Clean Air Act, an amendment to S. 1630 was offered by Senator Alan Simpson and passed by voice vote. That amendment proposes to exempt radioactive air emissions associated with sources regulated or licensed by the NRC or an NRC "agreement State" from any EPA regulations, including recently promulgated radionuclide standards, in favor of exclusive regulation by the NRC pursuant to the Atomic Energy Act. The amendment was presented purportedly to avoid dual regulation by the EPA and the NRC. The actual effect of the amendment, however, is quite different.

6/2
Stuck
First, if this amendment is left intact, air emissions from radioactive materials under NRC jurisdiction will no longer be subject to EPA regulations for radionuclides. Specifically, these sources will be limited only by the NRC's radionuclide emissions standard which can be 50 times less stringent than EPA's newly promulgated standard.

State
preempted
Second, by transferring all authority over these emission sources to the NRC, the States will be preempted from establishing their own more stringent standards for radioactive air emissions. Under Section 116 of the Clean Air Act, State authority to adopt stricter air emission standards clearly has been retained. There is no similar provision in the Atomic Energy Act. That Act has been found by the United States Supreme Court to preempt State regulation of radiation hazards. Therefore, the amendment in question would effectively prevent the States from exercising any control over harmful radioactive air emissions from sources regulated by the NRC.

Finally, this amendment may have an adverse effect on the cleanup of radioactive contamination pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (the Superfund Act). The Superfund Act provides a mechanism for the cleanup of all pollutants classified as "hazardous substances." Section 101(14) of the Act includes, within the definition of "hazardous substances," any hazardous air pollutant regulated under Section 112 of the Clean Air Act. The amendment will eliminate radioactive emissions produced by NRC regulated sources from the definition of hazardous air pollutants in the Clean Air Act and thus remove from the scope of the Superfund Act any radioactive air, soil or water contamination caused by these sources.

As you can see, the amendment, by removing both EPA and State authority to regulate significant radioactive air pollution, would be an unfortunate development. We encourage action on the floor of the Senate to delete this amendment.

SENT BY: Atty. General

; 2- 1-90 2:34PM ;

6157412009→

3122241867573;# 4

FROM: NAAG (202)628-2435

TO: TENNESSEE AG

JAN 31, 1990 2:51PM P.05

Senator George Mitchell
Page 3

**PHOTOCOPY
PRESERVATION**

**Thank you for your continuing efforts to assure that our
environment remains safe for future generations.**

Respectfully,

ROBERT ABRAMS
Attorney General of
New York

JAMES E. TIERNEY
Attorney General of
Maine

JOHN K. VAN DE KAMP
Attorney General of
California

BRIAN McKay
Attorney General of
Nevada

DUANE WOODWARD
Attorney General of
Colorado

ANTHONY J. CELEBREZZE, JR.
Attorney General of
Ohio

CLARINE NARDI RIDDLE
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Oregon

JIM JONES
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Idaho

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Attorney General of
Pennsylvania

WILLIAM J. GUSTE, JR.
Attorney General of
Louisiana

CHARLES W. BURSON
Attorney General and Reporter
of Tennessee

JAMES M. SHANNON
Attorney General of
Massachusetts

JIM MATTOX
Attorney General of
Texas

FRANK J. KELLEY
Attorney General of
Michigan

JEFFREY L. AMESTOY
Attorney General of
Vermont

HUBERT H. HUMPHREY, III
Attorney General of
Minnesota

KENNETH O. EKENBERRY
Attorney General of
Washington

ROBERT M. SPIRE
Attorney General of
Nebraska

DONALD J. HANAWAY
Attorney General of
Wisconsin

cc: Senator John Glenn

January 30, 1990

AMENDMENT No. 1220

On page 378, beginning with line 13, strike out all through line 21.

AMENDMENT No. 1221

On page 381, beginning with line 10, strike out all through line 2 on page 382.

AMENDMENT No. 1222

On page 381, line 14, immediately after "excluding" insert "emissions into the ambient air of".

On page 381, line 22, immediately after "excluding" insert "emissions into the ambient air of".

On page 382, between lines 2 and 3, insert the following:

(d) Notwithstanding any other provision of the Clean Air Act, or any other law, the regulation by the Nuclear Regulatory Commission of radioactive pollutant emissions into the ambient air shall not affect, modify, or preclude the authority of any State or political subdivision thereof to adopt or enforce any requirement respecting the control of such emissions.

NOTICES OF HEARINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LEAHY, Mr. President, I would like to announce a partial list of hearings that the Committee on Agriculture, Nutrition, and Forestry plans to hold for the 1990 farm bill:

February 1: Subcommittee on Agriculture and Stabilization of Prices. Hearing in preparation for 1990 farm bill: soybeans. SR332. 9:30 a.m.

February 6: Subcommittee on Agricultural Production and Stabilization of Prices. Hearing in preparation for 1990 farm bill: crop insurance. SR332. 9:30 a.m.

February 6: Subcommittee on Domestic and Foreign Marketing and Product Promotion. Hearing in preparation for 1990 farm bill: Export and Market Development Programs. SR332. 2:00 p.m.

February 7: Full Committee. Hearing in preparation for 1990 farm bill: the Administration's views. SR332. 9:30 a.m.

February 8: Subcommittee on Agricultural Research and General Legislation. Hearing in preparation for 1990 farm bill: grain quality enhancement. SR332. 9:30 a.m.

February 8: Subcommittee on Agricultural Credit. Hearing in preparation for 1990 farm bill: agricultural credit. SR332. 2:00 p.m.

February 20: Subcommittee on Agricultural Credit. Hearing in preparation for 1990 farm bill: agricultural credit. SR332. 2:30 p.m.

February 21: Full Committee. Hearing in preparation for 1990 farm bill: trade. SR332. 9:30 a.m.

February 22: Subcommittee on Agricultural Research and General Legislation. Hearing in preparation for 1990 farm bill: grain quality enhancement. SR332. 9:30 a.m.

February 27: Full Committee. Hearing in preparation for 1990 farm bill: "Hunger in America." SD G-50. 9:30 a.m.

March 1: Subcommittee on Agricultural Production and Stabilization of Prices. Hearing in preparation for 1990 farm bill: cotton. SR332. 9:30 a.m.

March 1: Subcommittee on Conservation and Forestry. Oversight hearing on the forestry title of the 1990 farm bill. SR332. 2:00 p.m.

March 2: Subcommittee on Agricultural Production and Stabilization of Prices. Hearing in preparation for 1990 farm bill: wool and honey. SR332. 10:00 a.m.

March 5: Subcommittee on Agricultural Production and Stabilization of Prices. Hearing in preparation for 1990 farm bill: rice. SR332. 9:30 a.m.

March 5: Subcommittee on Agricultural Credit. Hearing in preparation for 1990 farm bill: agricultural credit. SR332. 2:00 p.m.

March 6: Subcommittee on Agricultural Production and Stabilization of Prices. Hearing in preparation for 1990 farm bill: sugar. SR332. 10:00 a.m.

March 7: Full Committee. Hearing in preparation for 1990 farm bill: dairy. SR332. 9:30 a.m.

March 8: Subcommittee on Conservation and Forestry. Hearing in preparation for 1990 farm bill: conservation issues. SR332. 9:30 a.m.

March 8: Subcommittee on Agricultural Production and Stabilization of Prices. Hearing in preparation for 1990 farm bill: wheat. SR332. 2:00 p.m.

March 9: Subcommittee on Agricultural Research and General Legislation. Hearing in preparation for 1990 farm bill: noxious weeds. SR332. 9:30 a.m.

For further information, please call the committee at 224-2035.

COMMITTEE ON SMALL BUSINESS

Mr. BUMPERS, Mr. President, I would like to announce that the Small Business Committee has rescheduled its hearing on technology transfer and small business from February 22, 1990, to March 8, 1990. The hearing will be held in room 428A of the Russell Senate Office Building and will commence at 9:30 a.m. For further information, please call Joan Bready at 224-2016 or Scott Varady at 224-3052.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. BAUCUS, Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on January 30, 1990, at 9:30 a.m., to hold a hearing on the nominations of James Kolstad, of Colorado, to be Chairman, and Susan Coughlin, of Pennsylvania, to be a member of the National Transportation Safety Board; and Barry L. Harris, of Maine, to be Deputy Administrator of the Federal Aviation Administration.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. BAUCUS, Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in open session on Tuesday, January 30, 1990, at 2 p.m. to receive testimony on the implications of changes in the Soviet Union and Eastern Europe for Western Security.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. BAUCUS, Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Tuesday, January 30,

1990, at 9:15 a.m. for a hearing on "Teacher Excellence: Recruitment and Training."

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON MOD REHAB/HUD INVESTIGATIONS

Mr. BAUCUS, Mr. President, I ask unanimous consent that the MOD Rehab/HUD Investigations Subcommittee of the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate, Tuesday, January 30, 1990, at 9:30 a.m. to conduct hearings on the mission of HUD.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BAUCUS, Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, January 30, at 10 a.m. to hold a hearing on the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Treaty Doc. 100-20.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

DRUG-EXPOSED INFANTS

Mr. INOUE, Mr. President, yesterday at a luncheon sponsored by the Consortium on Children, Families and the Law, Dr. Theo Sonderegger and Prof. Josephine Gittler delivered a briefing on the issue of drug-exposed infants.

The consortium, comprised of the University of Hawaii, the University of Nebraska-Lincoln, State University of New York at Buffalo, University of Michigan, University of Virginia, and University of Pittsburgh, coordinates the network of participating institutions to facilitate independent and collaborative research on social, psychological, educational, economic, and legal issues affecting families. It disseminates the information in forms that will allow policymakers, governmental decisionmakers, and practitioners to take appropriate action.

Mr. President, I ask that the text of this briefing be printed in the Record.

The briefing follows:

DRUG EXPOSED INFANTS: SUMMARY OF REMARKS OF THEO SONDEREGGER, PH.D. AND JOSEPHINE GITTLER, J.D.

The real victims in the war against drugs, tragic though they may be, are not the well-publicized drug-users and drug-dealers; the real victims are the children born to today's drug-users and who, tomorrow, will constitute a large percentage of the members of our society. The infants being born today that endure the perinatal trauma induced by their parents' drug addictions, may experience throughout their lives the effects of their early drug exposure; the potential costs are incalculable to society. We, particularly members of the scientific, medical, social service, and legal professions, are beginning to work together with you, the policymakers, to recognize, treat, and prevent

Glen Amendments



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB -6 1990

OFFICE OF
AIR AND RADIATION

Honorable Timothy E. Wirth
United States Senate
Washington, DC 20510

Dear Senator Wirth:

I am pleased to be able to assist you by providing answers to the questions that were enclosed with your letter of January 31, 1990. Our answers are enclosed with this letter. I hope that this information will be helpful to you and other Senate members as you debate Clean Air Act legislation this week.

It is my understanding that you have asked the Nuclear Regulatory Commission (NRC) a similar set of questions. We have answered your questions about NRC requirements to the best of our understanding. Obviously, the NRC can provide you with more detailed explanations.

I have also enclosed for your information a copy of "A Guide for Determining Compliance with the Clean Air Act Standards for Radionuclide Emissions for NRC-Licensed and Non-DOE Federal Facilities," and the computer program "COMPLY". We believe that this system for demonstrating compliance with radionuclide air emission standards is very simple and easy to apply and is an effective approach for a large number of small users.

If you need additional information on this subject, please do not hesitate to call on me again.

Sincerely yours,

A handwritten signature in cursive script, reading "Richard J. Guimond".

Richard J. Guimond, Director
Office of Radiation Programs (ANR-458)

Enclosures

EPA Responses to Questions from Senator Wirth
Regarding the Regulation of Radioactive
Emissions from NRC Licensees

1. List the types of facilities that would be affected by nullifying the radionuclide emission standards (NESHAP) issued by EPA on November 1, 1989.

RESPONSE: EPA's radionuclide air emission standards for NRC licensees cover both the uranium fuel cycle and facilities handling by-product, source, and special nuclear materials. The uranium fuel cycle includes uranium mills, uranium hexafluoride conversion facilities, light-water reactor fuel fabricators, light-water power reactors, and fuel reprocessing plants. There are about 140 facilities in the uranium fuel cycle. Facilities handling by-product, source, and special nuclear materials include hospitals, radiopharmaceutical manufacturers, research laboratories, sealed source manufacturers, and low-level waste incinerators. There are approximately 6,000 facilities handling by-product, source, and special nuclear materials that would be affected.

2. (a) What dose limit for members of the public does the EPA NESHAP standards set for NRC licensees?

RESPONSE: EPA limits radionuclide emissions, including iodine, to those amounts that would cause any member of the public to receive an effective dose equivalent of 10 mrem per year from all pathways combined. Emissions of iodine are limited to those amounts that would cause any member of the public to receive an effective dose equivalent of 3 mrem per year from all pathways.

- (b) How does this compare to NRC Atomic Energy Act requirements for NRC licensees?

RESPONSE: NRC limits doses to the public from by-product, source, and special nuclear materials to 500 mrem per year to the whole body, blood forming organs and gonads; 3,000 mrem per year to the bone and thyroid; and 1,500 mrem per year to other organs although this limit is implied and not explicit (10 CFR 20). These limits apply to air releases; the same limits apply to liquid releases separately. There is no provision for summation of external and internal doses and the food pathway is excluded. NRC further restricts doses from facilities in the uranium fuel cycle to those established by the EPA under its Atomic Energy Act authority. These standards (40 CFR 190) restrict doses to members of the general public from radionuclides released to

2 - how determine organ basis.

the air or water to 25 mrem per year to the whole body or to any organ except the thyroid, which is limited to 75 mrem per year. These same standards apply to any facility licensed by NRC for the disposal of low-level radioactive waste.

The NRC regulations state that the licensees should make every reasonable effort to maintain radiation exposures and releases of radioactive materials as low as is reasonably achievable (ALARA). ALARA requirements have been expressed as a design goal of 5 mrem/year for nuclear power reactors but have not been quantified for other licensees.

The NRC has proposed changing the limit for dose to the public to an effective dose equivalent of 100 mrem per year for any licensee, divided between air emissions and liquid effluents. The proposed limit for all sources is 500 mrem/year. The final rule is currently undergoing internal NRC review.

3. (a) Describe the process used by EPA in arriving at the NESHAP dose limit for NRC licensees.

Q: are EPA's decisions?
BERRY?

RESPONSE: Under Section 112 of the Clean Air Act, as interpreted by the U.S. Court of Appeals for the District of Columbia, the EPA utilizes a two-step process. In the first step, EPA must establish a safe level without consideration of costs and technological feasibility. In the second step, the Agency considers costs and technological feasibility and determines a level for the standard that provides an ample margin of safety. This level may not be less stringent than the safe level. The Agency has decided that a maximum lifetime risk of approximately 1 in 10,000 represents a safe level. For NRC licensees, this corresponds to an effective dose equivalent limit of 10 mrem per year. In addition, the Agency limited the effective dose equivalent from iodine to 3 mrem per year because exposure to radioactive iodine results in a high percentage of non-fatal cancers. In estimating the risk from NRC licensees, EPA considered the most current information about the risks of exposure of radiation, which in mid-1989 included new reports on the latest assessment of Japanese atomic bomb survivors.

- b) Describe the process used by NRC in arriving at air emission dose limits for NRC licensees.

RESPONSE: NRC has established a set of radionuclide-specific air concentration limits corresponding to a dose of 500 mrem/y for NRC licensees; there is a more restrictive limit of 25 mrem/y for nuclear fuel cycle facilities. The

NRC regulations also state its licensees should make every reasonable effort to keep emissions "as low as reasonably achievable" (ALARA). ALARA has been quantified for nuclear power facilities as a design goal of 5 mrem per year; other NRC licensees have no similar requirement. The value of 500 mrem per year and the ALARA requirement are reflections of recommendations made in the late 1950s and early 1960s by international and national radiation protection advisory bodies, specifically, the International Commission on Radiation Protection (ICRP), the National Council on Radiation Protection and Measurements (NCRP), and the Federal Radiation Council (FRC). This guidance was based in part on the notion that 500 mrem/y was not greatly in excess of the natural radiation background of about 100 mrem/y and that the risks, as they were known at the time, were in appropriate balance with the benefits judged likely from the uses of radioactive materials.

For nuclear power reactors, the NRC adopted a standard that EPA established using its Atomic Energy Act authorities (40 CFR Part 190).

4. (a) Describe the EPA's NESHAP monitoring requirements for NRC licensees.

Licensees Other than Nuclear Power Reactors and Fuel Processing Plants

RESPONSE: EPA regulations allow NRC licensees a choice of methods for demonstrating compliance (see also the response to Question 6). For those facilities which elect to demonstrate compliance by measuring their emissions, measurements must be made at all release points which have a potential to discharge radionuclides into the air in quantities which could cause an effective dose equivalent in excess of 1% of the standard. All radionuclides which could contribute greater than 10% of the potential effective dose equivalent for a release point must be measured. Potential to discharge is based on the discharge of the uncontrolled effluent stream into the air.

Nuclear Power Reactors and Fuel Processing Plants

RESPONSE: Nuclear power reactors may determine their radionuclide emissions in conformance with the effluent technical specifications contained in their operating license issued by the NRC, or may use EPA's methods described above for licensees. Fuel processing and fabrication plants and uranium hexafluoride plants may determine their emissions in conformance with the NRC's

Regulation Guide 4.16 (December 1985), or may use EPA's methods described above for licensees. Uranium mills may determine their emissions in conformance with the NRC's Regulation Guide 4.14 (April 1980), or use EPA's methods described above for licensees.

4. (b) How does this compare to the NRC air emissions monitoring requirements for NRC licensees.

RESPONSE: It is our understanding that NRC determines whether to require monitoring of offsite releases on a case-by-case basis at the time a facility applies for a license. If monitoring is to be required, the specific requirements are incorporated into the license. In general, power reactors have monitoring requirements but most of the 6000 (approximately) material licensees do not.

5. (a) Describe the EPA's NESHAP recordkeeping and reporting requirements for NRC licensees.

RESPONSE: The owner or operator of any facility must maintain onsite for 5 years records documenting the input parameters and procedures used to determine the dose calculation. An annual report must be submitted to EPA covering the emissions of a calendar year by March 31 of the following year. A facility that emits radionuclides in an amount less than 10% of the standard is exempt from this reporting requirement. Facilities need to reevaluate each year to determine whether they qualify for this exemption. If a facility is not in compliance with the emission limits of the standard in the calendar year covered by the report, the facility must then report to the Administrator on a monthly basis until the Administrator determines it is no longer necessary.

- (b) How does this compare to the NRC air emissions recordkeeping and reporting requirements?

Licensees Other than Nuclear Power Reactors

RESPONSE: If monitoring is required, the licensee must maintain records showing the results. These records must be maintained for two years except for certain records which must be maintained until the Commission authorizes their disposition. There is no requirement for an annual report. For a very few of the largest licensees, the effluent source terms must be reported to the NRC on a quarterly or semi-annual basis. If concentrations of effluents in an

unrestricted area exceed the limits detailed in 10 CFR Part 20 or the license by a factor of 10, the licensee must report the occurrence to NRC within 30 days. For releases of large magnitude (500 times the limits of Appendix B, Table II, 10 CFR Part 20), notification must occur within 24 hours, or in cases 5000 times the limits of Appendix B, Table II, 10 CFR Part 20, immediately.

Nuclear Power Reactors

RESPONSE: These facilities are required to demonstrate and report annually their compliance with 40 CFR Part 190. In addition, they must document their compliance with the effluent limits in their technical specifications. If concentrations of effluents in an unrestricted area exceed the limits detailed in 10 CFR Part 20, or their license by a factor of 10, the licensee must report the occurrence to NRC within 30 days. For releases of large magnitude (500 times the limits of Appendix B, Table II, 10 CFR Part 20), notification must occur within 24 hours, or in cases 5000 times the limits of Appendix B, Table II, 10 CFR Part 20, immediately.

6. (a) Describe the EPA's NESHAP compliance requirements and procedures for NRC licensees.

RESPONSE: The EPA has developed compliance procedures that require that licensees calculate doses to members of the public based on the most appropriate scientific models available. The compliance procedures are tiered to reduce the burden on the regulated community. The approach begins with a simple method that uses assumptions that could overestimate the dose. If a facility is shown to be in compliance at this level, no further action is required; if not, the next level is considered. The methods become progressively more realistic and require more input data at succeeding levels. The methods are based on screening models developed by the National Council for Radiation Protection and Measurements. Licensees could do the calculations either by hand or with a user-friendly computer program called COMPLY that the Agency is supplying to assist the regulated community.

- (b) How does this compare to the NRC air emissions compliance requirements and procedures?

RESPONSE: In general, the NRC determines compliance by making an on-site inspection of a facility and its records. Facilities in the uranium fuel cycle are required to calculate doses annually. The overwhelming number of

facilities (6,000) handling by-product, source, and special nuclear material compare calculated or measured radionuclide air concentrations in the stack to Maximum Permissible Concentrations (MPCs) corresponding to 500 mrem per year. The MPCs consider the dose from inhalation but do not consider doses from ingestion of contaminated food, or direct radiation from material suspended in air or deposited on the ground. Although the NRC has a regulation that states that licensees handling by-product, source, and special nuclear materials should make every reasonable effort to maintain radiation exposure and releases of radioactive materials in effluents to unrestricted areas as low as reasonably achievable (ALARA), it appears that the implementation of this policy focuses almost exclusively on occupational exposure.

7. Has EPA found any NRC licensees that exceed the NESHAP air emissions standards?

RESPONSE: Currently, NRC licensees are not generally required to calculate doses to the public so that the EPA does not have a systematic means to identify facilities causing doses in excess of its standard. The compliance procedures developed by EPA are designed to identify those circumstances where radiation exposure in excess of the standard results from either high emissions, close proximity to the points of release, or the effects of buildings on air flow in the vicinity. In short, these compliance procedures are designed to characterize doses caused by NRC licensees and identify circumstances where the NESHAP air emission standards are exceeded. While there could be facilities with emissions in excess of the EPA standard due to these facilities not having installed readily available control technology, specific facilities have not, to date, been identified.

8. (a) What standards would govern air emissions from NRC licensees if the EPA NESHAP standards for NRC licensees were nullified?

RESPONSE: Limits imposed by 10 CFR 20 would apply to facilities using by-product, source and special nuclear materials. EPA standards established by 40 CFR 190 and adopted by NRC would apply to the uranium fuel cycle. (See, also, response to question 2(b)).

- (b) How do these standards compare to the EPA NESHAP air emission standards?

RESPONSE: NRC's dose limit for their licensees is 50 times higher than the EPA NESHAP dose limit; 500 mrem/y compared to 10 mrem/y. For the special case of uranium fuel cycle

facilities, NRC's dose limit derived from an previous EPA standard is 2.5 times higher than the EPA NESHAP dose limit, 25 mrem/y compared to 10 mrem/y. These comparisons are not exact due to the technical difference between an effective dose equivalent and a whole body dose, but are very close approximations when the radiation exposure is to all organs of the body equally.

EPA's rule limits emissions from a site regardless of the number of facilities on the site; this places a cap on the total emissions from the site. NRC rules limit emissions from the individual facilities on the site; thus, no cap is placed on the total emissions from the site.

We note that NRC requires all its licensees to hold their emissions to as low as reasonably achievable below these limits. This "ALARA" concept has been quantified for nuclear power reactors only where the design goal is 5 mrem/y; for other types of licensees there are no quantified goals or limits.

9. (a) What is the emission standard for radon at uranium milling facilities under the EPA NESHAP?

RESPONSE: Operating Mill Tailings Radon-222 emissions to the ambient air shall not exceed 20 pCi per square meter per second. No new tailings impoundment can be constructed unless it meets one of the following work practices: (1) Phased disposal in lined impoundments that are no more than 40 acres in area, or (2) Continuous disposal with no more than 10 acres uncovered at any time. The addition of water to the impoundment to reduce radon emissions is not permitted unless the impoundment has an impervious liner.

Disposal of Uranium Mill Tailings Radon-222 emissions to the ambient air shall not exceed 20 pCi per square meter per second. Once a tailings pile ceases to be operational it must be disposed of and brought into compliance with the rule within 2 years. Compliance must be confirmed by measurement.

- (b) What is the standard for radon emissions at uranium milling facilities under the NRC Atomic Energy Act standards?

RESPONSE: Operating Mill Tailings There is no standard for radon emissions at uranium milling facilities under the NRC Atomic Energy Act standard, however 40 CFR 192 requires facilities to use ALARA to control emissions.

RESPONSE: Disposal of Uranium Mill Tailings After disposal, radon emissions to the ambient air shall not

exceed 20 pCi per square meter per second. Under this Atomic Energy Act standard (established by EPA and adopted by NRC), this is a design goal, and NRC reviews the designs to determine if the goal is met. There is no requirement for verification by a measurement. There is no time limitation for disposal following shutdown of the impoundment.

10. How does the 10 mrem effective dose equivalent limit under NESHAP compare to the 500 mrem whole-body dose limit under NRC 10CFR20 in terms of maximum individual risk?

RESPONSE: The 10 mrem/y effective dose equivalent limit established under the EPA NESHAP is approximately equivalent to a 3 in 10,000 individual lifetime risk of fatal cancer. The risk can range from three times higher to one third of this risk due to uncertainties in health effects data. For exposure to radioiodine, there is a risk of non-fatal thyroid cancer about ten times the risk of fatal cancer. This dose limit applies to exposure from inhalation, ingestion, immersion and ground deposition of airborne radionuclides. These risk estimates are based on the best scientific information available at the time the standard was issued and have been favorably reviewed by a special radiation subcommittee of EPA's Science Advisory Board. A recent report by the National Academy of Science Committee on the Biological Effects of Ionizing Radiation (BEIR V) indicates that the risk conversion used by EPA could be too low by a factor of two. However, the report also points out that at dose rates such as those received by the public from an NRC licensee, the EPA risk estimate may be only very slightly low.

The 500 mrem/y limit under 10 CFR 20, if it were an effective dose equivalent, is approximately equivalent to a 1.4 in 100 individual lifetime risk of fatal cancer. This limit is implemented by specific limits on individual radionuclides, which were derived using scientific methodology and a system of dose limitation established in the 1950s. As a result, the risk may be higher because this methodology considers only the direct inhalation pathway. NRC is currently conducting a rulemaking to update this regulation and incorporate more recent scientific information.

11. Please translate all above figures into maximum individual risk terms.

RESPONSE: The risk figures given in response to question 10 are all maximum individual risks. The calculation is based on the assumption of continuous exposure for a 70-year lifetime.

QUENTIN N. BURDICK, NORTH DAKOTA, CHAIRMAN

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-8175

February 2, 1990

RE: Sec. 303 of the Clean Air Act Amendments of 1989

Dear Colleague:

We are writing to respectfully urge that you support the provision in S. 1630, the Clean Air Act Amendments of 1989, concerning the regulation of radionuclides, which was adopted unanimously by the Committee on Environment and Public Works.

It is our understanding that an amendment may be offered to S. 1630 that would lead to the regulation under the Clean Air Act of certain radioactive materials--namely those already regulated by the Nuclear Regulatory Commission (NRC)--over and above the existing regulation of those materials as described under the Atomic Energy Act. The Environment and Public Works Committee, the Environmental Protection Agency (EPA), the Department of Energy (DOE), the Department of Health and Human Services (including the National Institutes of Health), and the NRC oppose the imposition of any such dual regulation.

We believe that regulation of radionuclides (i.e., radioactive particles) under the Clean Air Act is wholly unnecessary because the existing regulatory system for radionuclides under the Atomic Energy Act is more than adequate to protect the public health and safety. Under the Atomic Energy Act, EPA sets generally applicable environmental standards for the release of radioactive materials and NRC then enforces these standards at all of its licensed facilities. In view of the agreement by all of the relevant regulatory bodies that this system is adequately, and safely, protecting the public, we believe there is no need for any additional regulation under the Clean Air Act.

Because of the effectiveness of the Atomic Energy Act regulations, EPA has consistently declined to impose any additional controls on NRC licensees pursuant to EPA's existing Clean Air Act authority. EPA has stated that a Clean Air Act standard "would be duplicative and would not offer any additional public health protection," and that "emissions . . . are already so low that public health and safety is already protected with an ample margin of safety." NRC has stated that a Clean Air Act standard "is not necessary as a matter of health risk [or] regulatory policy."

Although additional regulation will not provide any further health benefits, such regulation will surely impose significant costs upon the users of nuclear materials. This will only increase the cost of electricity generated from nuclear power plants and raise the cost of treatment by nuclear medicine. It is impossible to even try to justify the imposition of these additional costs--which ultimately will be borne by the consumer--if there are no resulting health benefits.

It is true that, if EPA is no longer provided with Clean Air Act authority to regulate radionuclides already regulated under the Atomic Energy Act, then the states would similarly no longer possess such authority. However, this result is no different from the result under other major environmental statutes. Under the Solid Waste Disposal Act, including the 1984 amendments, the states may regulate hazardous wastes more stringently than the federal government, except for radioactive materials regulated by NRC. Under the Clean Water Act, the states may regulate liquid effluents more stringently than the federal government, except for radioactive materials regulated by NRC. Thus, under the bill, a state's authority to regulate radioactive air emissions would be no different from its authority to regulate any other types of radiation hazards.

Significantly, and most importantly, no state has exercised its authority under the existing Clean Air Act to impose any air emission standards for NRC licensees which are more stringent than the federal standards. Accordingly, the Committee's bill will not weaken in any way any existing state protections for the public health and safety.

The issue of whether the states should be able to regulate nuclear power and materials "more stringently" than the federal government is broader than simply the issue of regulating air emissions and therefore it is much more appropriately addressed in a context other than the Clean Air Act. To properly consider this issue, it is necessary to examine the impact of state regulation upon the design of nuclear power plants, including the possible detrimental effect on safety of non-standardized designs that may result from state-by-state regulation, the impact of state regulation upon siting of locally unwanted facilities that are in the national interest to site somewhere--such as radioactive waste disposal or treatment facilities, and the impact of state regulation on the future use of nuclear materials and energy. We sincerely do not believe that the Clean Air Act is the appropriate forum to determine or debate the fundamental issue of the federal-state relationship over nuclear energy and materials.

Finally, we want to eliminate any confusion on two specific issues. First--because DOE facilities are not subject to NRC regulation--the bill does not affect EPA or state authority under the Clean Air Act over DOE facilities. EPA and the states will retain Clean Air Act authority over radionuclide emissions from DOE facilities.

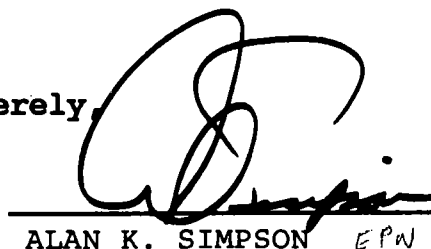
Second, after the Committee reported the bill, the National Academy of Sciences issued its "BEIR V" report, which indicated that the risks of exposure to low levels of radiation may be higher than some had previously estimated. However, much of the information contained in the BEIR V report was known to both NRC and EPA during EPA's most recent court-ordered rulemaking for radionuclide emissions. In fact, EPA used the risk estimates contained in the BEIR V report during this rulemaking, in which it concluded that existing emission levels established under the Atomic Energy Act already provided adequate protection to the public health with an ample margin of safety. Thus, the BEIR V report does not change the health and safety basis for eliminating dual regulation.

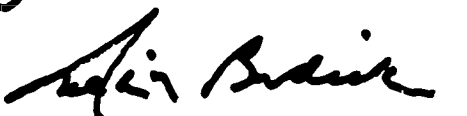
In sum, we believe that EPA and NRC are meeting the mission of adequately protecting the public health and safety. There is no practical need to overlay an additional layer of regulation that will not advance public health and safety in any way, but will only impose additional costs upon American industry, the medical profession, and the consumer. We respectfully urge you to support the Committee's provision regarding the regulation of radionuclides and assist us in opposing any amendments to strike or weaken it.

With best personal regards,

Sincerely,


JOHN BREAUX EPW


ALAN K. SIMPSON EPW


QUENTIN N. BURDICK
CHAIRMAN *John EPW*

only 3 of 16

REGULATION OF RADIONUCLIDES FACTS

Under the Atomic Energy Act:

- EPA establishes generally applicable environmental standards for radionuclide emissions.

The AEA standards must be adequate to protect the public health and safety.

The standards may not consider cost.

- NRC enforces the EPA general standards at NRC facilities.

The NRC regulations also require that emissions from NRC licensees be "as low as reasonably achievable." (ALARA).

Adequacy of Existing Regulations:

- EPA has consistently stated that NRC regulations are adequate.

EPA stated that to issue a Clean Air Act standard in addition to the Atomic Energy Act standard "would be duplicative and would not offer any additional public health protection."

EPA later stated that "EPA continues to believe emissions from these sources are already so low that public health is already protected with an ample margin of safety, even without regulations."

Last November, when promulgating Clean Air Act emission standards for radionuclides pursuant to court order, EPA concluded that existing emission levels from all NRC licensees protect the public health with an adequate margin of safety. EPA stated that "while the level of health protection achieved under the NRC standard is generally comparable to that required by EPA's rule, the two standards are very different in form, and the means of demonstrating compliance with each standard impose significantly different regulatory requirements."

- NRC also believes that existing regulations are adequate.

NRC has stated that a Clean Air Act standard "is not necessary as a matter of health risk [or] regulatory policy"

- The National Council on Radiation Protection (a Congressionally chartered council to set guidelines for radiation protection) has stated:

Annual doses from nuclear power plants are below regulatory limits.

"Releases are small because regulations are stringent and control measures are effective."

- The National Institutes of Health (part of HHS) has stated that existing NRC standards adequately protect the public with an ample margin of safety.

- Comparison of standards and doses:

NRC annual limit on emissions from a nuclear power reactor:	5 millirems
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Round-trip by air from DC to California	7 millirems
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Increased annual dose from living in Denver, due to altitude	50 millirems
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Annual dose from natural background (non-radon)	100 millirems
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Increased annual cancers from radiation from nuclear power plants	0.1
---	-----

Increased annual deaths from tripping and falling	470
---	-----

Cancers per year attributable to natural background radiation	10,000
---	--------

Cancers per year due to natural radon in homes	5,000 to 20,000
--	--------------------

(Source: EPA)

State Regulation of Radionuclides:

- The Atomic Energy Act preempts states from imposing regulations for radioactive materials more stringent than those of the federal government.
- Generally, other environmental statutes have preserved this regulatory structure--

Solid Waste Disposal Act--

States may regulate hazardous wastes, other than radioactive materials regulated by NRC, more stringently than the federal government.

Clean Water Act--

States may regulate liquid effluents, other than radioactive materials regulated by NRC, more stringently than the federal government.

Clean Air Act--

States may regulate air emissions more stringently than the federal government. Prior to 1977, such authority did not extend to radioactive materials regulated by NRC. States were granted authority to regulate air emissions of radionuclides in the 1977 Amendments to the Clean Air Act.

No state has used the Clean Air Act to impose air emission standards more stringent than the EPA standards.

Environment Committee provision will not result in the preemption of any more stringent state air emission standards.

- Environment Committee amendment conforms state authority for air emissions to state authority for liquid effluents and solid waste.

- Broader question of whether states should be able to regulate nuclear power more stringently than the federal government is not an issue that should be debated in the Clean Air Act. Factors to be considered:

Effect on design and operation of nuclear power plants, including possible detrimental impact on safety of non-standardized designs that vary from state to state.

State technical capabilities to regulate in this area.

Use of state authority to prevent siting of unwanted facilities that are in the national or regional interest--such as waste disposal or treatment facilities--rather than protection of public health and safety.

Effect on future use of nuclear materials.

ANDREA N. DRAVO
VICE PRESIDENT

**AMERICAN NUCLEAR
ENERGY COUNCIL**

410 FIRST STREET, S.E.
WASHINGTON, D.C. 20003
(202) 484-2670

AMENDMENT NO. ____ (Senator Simpson)

I. Add at page 92:

"Section 5

- (a) Section 122(a) of the Clean Air Act is amended by including after the words 'including source material, special nuclear material, and byproduct material' the phrase 'but excluding such materials regulated by the Nuclear Regulatory Commission or by a State which has an agreement with the Commission pursuant to Section 274 of the Atomic Energy Act of 1954, as amended'.
- (b) Section 122(c) of the Clean Air Act is deleted.
- (c) Section 302(g) of the Clean Air Act is amended by including after the words 'including source material, special nuclear material, and byproduct material' the phrase 'but excluding such materials regulated by the Nuclear Regulatory Commission or by a State which has an agreement with the Commission pursuant to Section 274 of the Atomic Energy Act of 1954, as amended'."

II. Amend proposed Section 112(r) at pages 65-66 to read as follows:

"(r) SAVINGS CLAUSE.--No amendment to this section made by the Toxics Release Prevention Act of 1989 shall affect any emission standard for a hazardous air pollutant which has been promulgated prior to the enactment of such Act. Emissions standards for categories and subcategories of sources of radionuclides for which standards were proposed at 54 Federal Register 9612 (March 7, 1989), except sources which are subject to licensing by the Nuclear Regulatory Commission, shall be established in accordance with Section 112 of the Clean Air Act as in effect prior to the enactment of this section."

the regional level and is meeting the environmental standards included in regulations for their purpose, if they are taken. The permittees and operators of facilities and provide notice of and include a careful accounting of information which can be used and which is indicative of emissions imposed here. The permit shall also include specific standards issued under the Act to be reported by industries in compliance with the Act to the extent possible. The permit shall also include specific standards issued under the Act to be reported by industries in compliance with the Act to the extent possible. The permit shall also include specific standards issued under the Act to be reported by industries in compliance with the Act to the extent possible.

on the development of the bill by subsection (k). The recommendations made under section 129 and ten in response to any recommendations include changes in law which are recommended under section 129.

of the expenditures of the control agencies to the bill and 129.

112, as added by the bill, as are necessary to the bill. The authorization

TON 302)

not an amendment to the Administrator to list boat sources when establishing standards for styrene, unless the standards are inconsistent with requirements of the Clean Air Act.

there are differences in the manufacturing process for industries that use styrene.

rene. Emissions from the recreational boat building industry are far greater in air volume and lower in styrene content than similar emissions from other segments of the reinforced plastics industry which use different manufacturing processes. Citing this difference is not to suggest any conclusion in terms of risk to public health from styrene any conclusion in terms of risk to public health from styrene emissions of any industry; but rather is only to indicate that requiring the same technology-based emissions standards for boat manufacturing as are mandated for other segments of the reinforced plastics industry may impose disproportionate costs on boat builders. Therefore, the provisions establishes a separate subcategory for recreational boat manufacturing.

If the Administrator demonstrates that the costs of achieving compliance and any non-air quality health and environmental impacts or energy requirements will not be borne disproportionately by the recreational boat building industry, then the Administrator may find that a separate listing for recreational boat builders would be inconsistent with the goals and requirements of the Clean Air Act and would not be required to establish such a subcategory when regulating styrene emissions.

DUAL REGULATION OF RADIONUCLIDES (SECTION 303)

SUMMARY

This section of the bill amends Section 302(g) of the Clean Air Act to exclude radioactive materials regulated by the Nuclear Regulatory Commission (NRC) or an Agreement State under the Atomic Energy Act from the definition of "air pollutant." Thus, in the future, such materials will be regulated solely under the Atomic Energy Act.

DISCUSSION

Under existing law, emissions of radionuclides from facilities licensed by the NRC are regulated under both the Atomic Energy Act and the Clean Air Act. The Atomic Energy Act of 1954, as amended, and the Reorganization Plan No. 3 of 1970 provide EPA with the authority to establish generally applicable environmental standards for the release of radioactive materials regulated under the Atomic Energy Act. The standards established by EPA under this authority must be adequate to protect the public health and safety and are not to consider cost.

Using this authority, EPA has promulgated environmental standards for the operation of uranium fuel cycle activities which include nuclear power plants, uranium mills, and nuclear fuel fabrication facilities. EPA also has established generally applicable environmental standards for high-level and transuranic waste storage and disposal facilities.

NRC enforces these standards at NRC-licensed facilities by promulgating regulations governing the operation of those facilities. Additionally, NRC requires that radionuclide emissions from facilities under their jurisdiction be "as low as reasonably achievable."

At present, these same radionuclide emissions also are regulated under the Clean Air Act. In 1979, EPA listed radionuclides as a

"hazardous air pollutant" under Section 112 of the Clean Air Act. After considerable litigation over several years concerning the scope of the EPA's resulting obligation under the Clean Air Act to issue National Emission Standards for Hazardous Air Pollutants (NESHAP) for radionuclides, the EPA issued, on November 1, 1989, final emission standards for radionuclides. In promulgating the rule, EPA stated that the decisions in *Natural Resources Defense Council v. EPA*, 824 F. 2d at 1146 (D.C. Cir. 1987) (the *Vinyl Chloride* case), and *Sierra Club v. Ruckelshaus*, 602 F. Supp. 892 (N.D.Cal. 1984), compelled EPA to issue a NESHAP for radionuclides.

The section 112 standards cover various sources of radionuclides, including all NRC licensees. In addition to establishing numerical standards for air emissions of radionuclides at these facilities, EPA has imposed various recordkeeping, monitoring, and reporting requirements for the sources covered.

During the legal controversy over the EPA's obligation to issue a NESHAP for radionuclides, EPA stated on several occasions that the regulation of radionuclide emissions from sources regulated by NRC under the Atomic Energy Act already provided adequate protection to the public health and safety. For example, in 1984, EPA stated that to issue an emission standard for uranium fuel cycle facilities in addition to the Atomic Energy Act standard "would be duplicative and . . . would not offer any additional public health protection." 50 Fed. Reg. at 5191.

Similarly, with respect to other NRC licensees, EPA stated that:

EPA continues to believe existing emissions from these sources are already so low that the public health is already protected with an ample margin of safety, even without regulations. . . . Since the beginning of regulation under section 112, EPA has interpreted this section as not requiring regulation in cases where the risks from a category of sources do not exceed a certain minimum threshold. Indeed, contrary interpretations lead to results that are hard to defend from any logical or policy perspective. *Id.*

Despite its objections, EPA nonetheless proceeded to issue a radionuclide NESHAP for these licensees as required under the Clean Air Act pursuant to the order of the U.S. District Court in *Sierra Club v. Ruckelshaus*, *supra*. The radionuclide NESHAP issued by the EPA for these licensees under the Clean Air Act was approximately equivalent to the environmental standard for uranium fuel cycle facilities issued by EPA under the Atomic Energy Act, and reflected existing control technologies, operating practices, and emission levels of the non-fuel cycle licensees.

NRC objected to the inclusion of NRC licensees in the EPA radionuclide NESHAP issued on November 1, 1989. During the EPA rulemaking, NRC commented that "the proposed rule is not necessary as a matter of health risk, regulatory policy, or law." NRC stated that the existing regulatory structure already "provide[s] a very high degree of protection of public health and safety."

Although both EPA and NRC have stated that regulation of radionuclides under the Clean Air Act will not provide significant

public health benefits, the significant costs. Me Atomic Energy Act compliance with the Clean Air Act are different. Also are different. Requirements impose under both statutes a significant public health benefit.

Dual regulation is also for the regulation under two separate laws. EPA devote substantial resources to considering the health and environmental law. EPA is able for non-duplicative.

Both EPA and NRC to eliminate dual regulation. Atomic Energy Act. Accordingly, section 161 of the Atomic Energy Act of 1954, as amended, "pollutant" in section 161 are emitted from a source has an agreement with the Atomic Energy Commission forming amendment.

In addition, the Clean Air Act is preempted by NRC licensing by NRC by that provision by EPA on November 1, 1989, Agreement State.

Because DOE emissions from EPA under the Atomic Energy Act, non-NRC sources continue to be regulated. EPA's regulatory structure under the Atomic Energy Act is not affected.

PREVENTION

Section 304 of the Atomic Energy Act to establish chemical accidents when the Atomic Energy Act with other accidents. The Environmental Protection Agency established by the Atomic Energy Act. The new Act of 1954 into the air.

the Clean Air Act. The Clean Air Act to November 1, 1989, promulgating the Resources Defense Fund (the Vinyl Chloride) 302 F. Supp. 892 HAP for radionu-

of radionuclides, publishing numerical facilities, EPA and reporting re-

igation to issue a on occasions that ces regulated by ad adequate pro- le, in 1984, EPA um fuel cycle fa- dard "would be d public health

PA stated that:

from these alth is al- fety, even regulation ion as not m a cate- m thresh- ults that respective.

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EPA radio- g the EPA s not neces- law." NRC provide[s] a ,," tion of ra- significant

public health benefits, such regulation will entail additional and significant costs. Methods for demonstrating compliance with the Atomic Energy Act differ from the methods for demonstrating compliance with the Clean Air Act standards. The compliance criteria also are different. Monitoring, recordkeeping, and reporting requirements impose significant costs upon the regulated entity under both statutes. These costs are not justified in the absence of a significant public health benefit.

Dual regulation is expensive not only for the regulated entity but also for the regulating agencies. If regulation were to continue under two separate statutes, both EPA and NRC would need to devote substantial resources to enforcing duplicative regulations. Considering the shortage of funds available for the enforcement of environmental laws, it is important to make scarce resources available for non-duplicative activities.

Both EPA and NRC support an amendment to the Clean Air Act to eliminate dual regulation of NRC licensees under both the Atomic Energy Act and the Clean Air Act.

Accordingly, section 303 eliminates regulation under the Clean Air Act of radionuclides already regulated by NRC under the Atomic Energy Act. Section 303 deletes from the definition of "air pollutant" in section 302 of the Clean Air Act radionuclides which are emitted from a facility licensed by NRC or by a State which has an agreement with the Commission pursuant to section 274 of the Atomic Energy Act (i.e., an "Agreement State"). Other conforming amendments to section 122 are made as well.

In addition, the savings clause (section 112(r), as amended by the Clean Air Act Amendments of 1989) excludes sources subject to licensing by NRC from the radionuclide emission standard preserved by that provision. Thus, the radionuclide emission standards issued by EPA on November 1, 1989, for facilities licensed by the NRC or Agreement States are nullified.

Because DOE facilities are not licensed by NRC, radionuclide emissions from those facilities would continue to be regulated by EPA under the Clean Air Act. Radionuclide emissions from other non-NRC sources also are not affected by this section, and would continue to be regulated by EPA under the Clean Air Act. In addition, EPA's regulatory authority to set generally applicable environmental standards for radionuclides under the Atomic Energy Act is not affected by this section.

PREVENTION OF SUDDEN, ACCIDENTAL RELEASES (SECTION 304)

SUMMARY

Section 304 of the bill adds a new section 129 to the Clean Air Act to establish programs and requirements to prevent catastrophic chemical accidents and to mitigate the consequences of such accidents when they do occur. These authorities are to be coordinated with other accident prevention and response authorities assigned to the Environmental Protection Agency including the programs established by the Emergency Planning and Community Right-to-Know Act of 1986.

The new section 129 addresses substances which, when released into the air in significant quantities, may, even in periods of limit-

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do this*

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-8175

February 2, 1990

RE: Sec. 303 of the Clean Air Act Amendments of 1989

Dear Colleague:

We are writing to respectfully urge that you support the provision in S. 1630, the Clean Air Act Amendments of 1989, concerning the regulation of radionuclides, which was adopted unanimously by the Committee on Environment and Public Works.

It is our understanding that an amendment may be offered to S. 1630 that would lead to the regulation under the Clean Air Act of certain radioactive materials--namely those already regulated by the Nuclear Regulatory Commission (NRC)--over and above the existing regulation of those materials as described under the Atomic Energy Act. The Environment and Public Works Committee, the Environmental Protection Agency (EPA), the Department of Energy (DOE), the Department of Health and Human Services (including the National Institutes of Health), and the NRC oppose the imposition of any such dual regulation.

*i.e. EPA
still setting
the standards*

We believe that regulation of radionuclides (i.e., radioactive particles) under the Clean Air Act is wholly unnecessary because the existing regulatory system for radionuclides under the Atomic Energy Act is more than adequate to protect the public health and safety. Under the Atomic Energy Act, EPA sets generally applicable environmental standards for the release of radioactive materials and NRC then enforces these standards at all of its licensed facilities. In view of the agreement by all of the relevant regulatory bodies that this system is adequately, and safely, protecting the public, we believe there is no need for any additional regulation under the Clean Air Act.

Because of the effectiveness of the Atomic Energy Act regulations, EPA has consistently declined to impose any additional controls on NRC licensees pursuant to EPA's existing Clean Air Act authority. EPA has stated that a Clean Air Act standard "would be duplicative and would not offer any additional public health protection," and that "emissions . . . are already so low that public health and safety is already protected with an ample margin of safety." NRC has stated that a Clean Air Act standard "is not necessary as a matter of health risk [or] regulatory policy."

Although additional regulation will not provide any further health benefits, such regulation will surely impose significant costs upon the users of nuclear materials. This will only increase the cost of electricity generated from nuclear power plants and raise the cost of treatment by nuclear medicine. It is impossible to even try to justify the imposition of these additional costs--which ultimately will be borne by the consumer--if there are no resulting health benefits.

prescription
It is true that, if EPA is no longer provided with Clean Air Act authority to regulate radionuclides already regulated under the Atomic Energy Act, then the states would similarly no longer possess such authority. However, this result is no different from the result under other major environmental statutes. Under the Solid Waste Disposal Act, including the 1984 amendments, the states may regulate hazardous wastes more stringently than the federal government, except for radioactive materials regulated by NRC. Under the Clean Water Act, the states may regulate liquid effluents more stringently than the federal government, except for radioactive materials regulated by NRC. Thus, under the bill, a state's authority to regulate radioactive air emissions would be no different from its authority to regulate any other types of radiation hazards.

Significantly, and most importantly, no state has exercised its authority under the existing Clean Air Act to impose any air emission standards for NRC licensees which are more stringent than the federal standards. Accordingly, the Committee's bill will not weaken in any way any existing state protections for the public health and safety.

The issue of whether the states should be able to regulate nuclear power and materials "more stringently" than the federal government is broader than simply the issue of regulating air emissions and therefore it is much more appropriately addressed in a context other than the Clean Air Act. To properly consider this issue, it is necessary to examine the impact of state regulation upon the design of nuclear power plants, including the possible detrimental effect on safety of non-standardized designs that may result from state-by-state regulation, the impact of state regulation upon siting of locally unwanted facilities that are in the national interest to site somewhere--such as radioactive waste disposal or treatment facilities, and the impact of state regulation on the future use of nuclear materials and energy. We sincerely do not believe that the Clean Air Act is the appropriate forum to determine or debate the fundamental issue of the federal-state relationship over nuclear energy and materials.

7.29.82
J. B. Breaux

Finally, we want to eliminate any confusion on two specific issues. First--because DOE facilities are not subject to NRC regulation--the bill does not affect EPA or state authority under the Clean Air Act over DOE facilities. EPA and the states will retain Clean Air Act authority over radionuclide emissions from DOE facilities.

Second, after the Committee reported the bill, the National Academy of Sciences issued its "BEIR V" report, which indicated that the risks of exposure to low levels of radiation may be higher than some had previously estimated. However, much of the information contained in the BEIR V report was known to both NRC and EPA during EPA's most recent court-ordered rulemaking for radionuclide emissions. In fact, EPA used the risk estimates contained in the BEIR V report during this rulemaking, in which it concluded that existing emission levels established under the Atomic Energy Act already provided adequate protection to the public health with an ample margin of safety. Thus, the BEIR V report does not change the health and safety basis for eliminating dual regulation.

In sum, we believe that EPA and NRC are meeting the mission of adequately protecting the public health and safety. There is no practical need to overlay an additional layer of regulation that will not advance public health and safety in any way, but will only impose additional costs upon American industry, the medical profession, and the consumer. We respectfully urge you to support the Committee's provision regarding the regulation of radionuclides and assist us in opposing any amendments to strike or weaken it.

With best personal regards,

Sincerely,

John Breaux

REGULATION OF RADIONUCLIDES FACTS

Under the Atomic Energy Act:

- EPA establishes generally applicable environmental standards for radionuclide emissions.

The AEA standards must be adequate to protect the public health and safety.

The standards may not consider cost.

- NRC enforces the EPA general standards at NRC facilities.

The NRC regulations also require that emissions from NRC licensees be "as low as reasonably achievable." (ALARA).

Adequacy of Existing Regulations:

- EPA has consistently stated that NRC regulations are adequate.

EPA stated that to issue a Clean Air Act standard in addition to the Atomic Energy Act standard "would be duplicative and would not offer any additional public health protection."

EPA later stated that "EPA continues to believe emissions from these sources are already so low that public health is already protected with an ample margin of safety, even without regulations."

Last November, when promulgating Clean Air Act emission standards for radionuclides pursuant to court order, EPA concluded that existing emission levels from all NRC licensees protect the public health with an adequate margin of safety. EPA stated that "while the level of health protection achieved under the NRC standard is generally comparable to that required by EPA's rule, the two standards are very different in form, and the means of demonstrating compliance with each standard impose significantly different regulatory requirements."

- NRC also believes that existing regulations are adequate.

NRC has stated that a Clean Air Act standard "is not necessary as a matter of health risk [or] regulatory policy"

- The National Council on Radiation Protection (a Congressionally chartered council to set guidelines for radiation protection) has stated:

Annual doses from nuclear power plants are below regulatory limits.

"Releases are small because regulations are stringent and control measures are effective."

- The National Institutes of Health (part of HHS) has stated that existing NRC standards adequately protect the public with an ample margin of safety.

- Comparison of standards and doses:

NRC annual limit on emissions from a nuclear power reactor:	5 millirems
Round-trip by air from DC to California	7 millirems
Increased annual dose from living in Denver, due to altitude	50 millirems
Annual dose from natural background (non-radon)	100 millirems

Increased annual cancers from radiation from nuclear power plants	0.1
Increased annual deaths from tripping and falling	470
Cancers per year attributable to natural background radiation	10,000
Cancers per year due to natural radon in homes	5,000 to 20,000

(Source: EPA)

State Regulation of Radionuclides:

- The Atomic Energy Act preempts states from imposing regulations for radioactive materials more stringent than those of the federal government.
- Generally, other environmental statutes have preserved this regulatory structure--

Solid Waste Disposal Act--

States may regulate hazardous wastes, other than radioactive materials regulated by NRC, more stringently than the federal government.

Clean Water Act--

States may regulate liquid effluents, other than radioactive materials regulated by NRC, more stringently than the federal government.

Clean Air Act--

States may regulate air emissions more stringently than the federal government. Prior to 1977, such authority did not extend to radioactive materials regulated by NRC. States were granted authority to regulate air emissions of radionuclides in the 1977 Amendments to the Clean Air Act.

No state has used the Clean Air Act to impose air emission standards more stringent than the EPA standards.

Environment Committee provision will not result in the preemption of any more stringent state air emission standards.

- Environment Committee amendment conforms state authority for air emissions to state authority for liquid effluents and solid waste.
- Broader question of whether states should be able to regulate nuclear power more stringently than the federal government is not an issue that should be debated in the Clean Air Act. Factors to be considered:

Effect on design and operation of nuclear power plants, including possible detrimental impact on safety of non-standardized designs that vary from state to state.

State technical capabilities to regulate in this area.

Use of state authority to prevent siting of unwanted facilities that are in the national or regional interest--such as waste disposal or treatment facilities--rather than protection of public health and safety.

Effect on future use of nuclear materials.

January 29, 1990

SUPPORT ENVIRONMENT COMMITTEE PROVISION
RELATING TO
THE DUAL REGULATION OF RADIONUCLIDE EMISSIONS

Summary

The Committee on Environment and Public Works has reported a clean air bill (S. 1630) which proposes to completely overhaul the regulatory program for the regulation of hazardous air pollutants. In essence, the bill moves away from the current approach to regulation based upon health risk assessments (although such is retained for the "second phase" of control) to one based upon the application of maximum achievable control technology (MACT).

Under current law, the Administrator of EPA is required to first list a pollutant as a "hazardous air pollutant" and then determine a specific emissions limit (known as a National Emission Standard for Hazardous Air Pollutant or NESHA), by source category. By contrast, S. 1630 includes an initial list of 191 specific substances to which the MACT standard will be applied.

One of the substances specifically included on the list is radionuclides, that is, a type of atom that spontaneously undergoes radioactive decay. Radionuclides are emitted from a number of sources, both natural and as a result of industrial, manufacturing and other activities (see attached chart). One such group of radionuclide emission sources are various facilities utilizing radioactive material owned or operated by companies or individuals pursuant to a license from the Nuclear Regulatory Commission (NRC) under authorities contained in the Atomic Energy Act (AEA).

In recognition of the fact that radionuclide emissions from such facilities have been adequately regulated for over 30 years pursuant to the Atomic Energy Act (AEA), the Committee unanimously adopted an amendment offered by Senator Simpson, and supported by the EPA, NRC, Department of Energy (DOE) and the Department of Health and Human Services, that redefined the term "air pollutant" in pertinent sections of the Clean Air Act to exclude radionuclide emissions from NRC licensed sources. The nuclear and electric utility industries support this amendment and urge Members to oppose any attempt that might be made to delete or modify this provision.

Background

The issue of dual regulation (that is, the development of separate regulatory regimes under both the Clean Air Act and the Atomic Energy Act) of airborne radionuclide emissions from licensees of the Nuclear Regulatory Commission has been the subject of Congressional review since the last comprehensive rewrite of the Clean Air Act in 1977. The issue was the subject of extended discussion during both the Subcommittee and full Committee markup of this years legislation.

With respect to such emissions, it is important to recognize that the Atomic Energy Act (AEA) allows the NRC to only issue licenses to those facilities that it determines are capable of operating in a manner that provides reasonable assurances of protecting human health and safety. Cost may not be considered in the development of the regulations implementing this statutory mandate. Radionuclide emissions from such facilities are currently subject to regulation by both the NRC and the EPA under the AEA.

In fact, the first regulations restricting emissions from such facilities were issued by the Atomic Energy Commission (the predecessor to the NRC) in 1957. Since that time, the regulations have been updated to account for advances in the understanding of the health impacts of exposure to low-levels of ionizing radiation, and to ensure that power plant emissions are kept "as low as reasonably achievable" (ALARA). The so-called ALARA principle is internationally recognized as the proper approach to radiation protection standard setting and is embodied in the NRC's regulations as a second phase of radiation protection, after the application of minimum design (technology) requirements, noted below.

Currently, the International Council on Radiation Protection, and in the U.S., the National Council on Radiation Protection, have determined that an individual should not be annually exposed to more than 100 millirem of radiation, above natural background levels.

The EPA, which was given the authority to adopt general environmental standards for radiation protection (under the authority of the Atomic Energy Act) pursuant to Reorganization Plan No. 3 of 1970 (which created the agency), promulgated regulations in 1974-1977 (40 C.F.R. Part 190) requiring the entire uranium fuel cycle (from the milling of uranium, to enrichment, to fuel fabrication, to the burning of fuel in reactors) to keep the exposure rate of the public to radionuclide emissions to no more than 25 millirem annually.

The NRC, in turn, updated its emission regulations in 1975 when it promulgated Appendix I to its Part 50 regulations, which established design criteria for light water reactors. Those design requirements specify that such facilities must emit no more than 5 millirem through either air or water pathways. These design requirements are incorporated as technical specifications in each reactors operating license.

Importantly, the analysis of risk, based upon actual data gathering, indicates that emissions from this Nation's reactors are well below 1 millirem, representing less than a 1 in a million lifetime cancer risk, one of the goals of the so-called "residual risk" regulations for carcinogens set forth in S. 1630.

Indeed, the EPA, in its recently promulgated rulemaking establishing various national emission standards for hazardous air pollutants (NESHAPs) for radionuclides, concluded that current emissions for all NRC licensees result in an estimated incidence of between 0.1 and 0.16 fatal cancers per year and that approximately 99% of that risk is borne by people whose individual risk is less than 1 in a million.

While the EPA determined it was bound to issue a final radionuclide rule, promulgating a NESHAP for all radionuclide sources, due to a consent agreement, the fact that the agency was proposing a NESHAP for NRC licensees containing emission rates greater than the emission rates such licensees are required to design their facilities to meet did not go unnoticed by the EPA or the NRC. In fact, the EPA noted in its rulemaking that while it was issuing such regulations it was simultaneously granting an NRC motion for reconsideration of the regulation as it pertained to NRC licensees and was staying the effective date of that part of the rule. Additional comments were invited and further regulatory action is anticipated.

It should be noted that the amendment adopted by the Environment Committee in no way reduces or removes the current regulatory authority of the NRC or the EPA under the Atomic Energy Act for NRC licensed facilities, regulatory authority that is being exercised in a manner that the EPA has determined provides protection to public health with an ample margin of safety. The amendment also does not affect the ability of the EPA to promulgate clean air NESHAPs for radionuclides emitted by DOE facilities or other radionuclide sources.

x introduce fir →
no votes till after
break.

Jimmy Powell
Radonucleides

Simpson - Bureau - \$303
- not just avoiding dual pay
but states now preempt.

→ Glenn will fix committee
suppative

desired services Sen. Simpson, Stenice
→ all are v. hot grandfathering DOE

site specific → deal is out/supported by
exception of how we handle
hazard for the area
Committee +
down.

Utilities → still as is.

Port-Alexis
Glenn

3 amendments - to get rid of B.S.
sever author. of EPA + State

* trying to work w/ EPW to work out

MOU between EPA + NRCC → single paperwork

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prob. on led too → but no deals during White House

Arch Low

Ben Jackson

CO₂

Nissan

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Chafee + Nichols

[Further will consider global
warming in next session]

Brucus - v. CO₂
Mitchell - complicating

2nd round { Year II will stay in but w/ a trigger
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Energy →

* phy deal

576-0948

Prof Alorany 2.7.89

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(NRCC)
V. Car

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David Alorany - NRDC

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(Comp)

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- ① Who supporting Glen event?
- ② Why didn't they play Glen with up DOE issue
- ③ How does EPA feel?

(in the bill) Glenn amend → will remove Superfund amend +
bring nuclear facilities back under
EPA's purview. DOE facilities are under
regulation, but old rules still
we asked to go to grandfathered
→ old clean &
part higher reg.

MRS- a DOE family - $\therefore$ will be under

Susan Carndon = Sen Glenn - Envt LA
Bob Alvarez 44751 Youth Affairs Comm.

DOE

NEWS

FOR IMMEDIATE RELEASE
January 24, 1990

PETER GROSS NAMED DIRECTOR OF DOE'S ENVIRONMENTAL PROTECTION DIVISION

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3454 { OAK RIDGE, TN -- Peter J. Gross has been named Director of the
Environmental Protection Division for the Department of Energy's (DOE)
Oak Ridge Operations (ORO).

In his new position, Gross will be responsible for managing the environmental protection program for ORO and its prime contractors, including; developing environmental protection policies for all ORO activities; establishing evaluation criteria and guidelines for determining compliance of contractor environmental protection programs with DOE and ORO policy and for assessing overall contractor performance in environmental activities; and ensuring risks and vulnerabilities are being identified and appropriate actions are being taken.

Since 1987, Gross has served as the Director of the Technical Services Division where he was responsible for managing DOE's Formerly Utilized Sites Remedial Action Program (FUSRAP). The program involved the survey and cleanup or control of sites in the United States where low-level radioactive contamination remains from the early years of the nation's atomic energy program. Prior to this position, Gross served as manager of ORO's Monitored Retrievable Storage (MRS) Office.

Gross joined the Atomic Energy Commission (AEC), a DOE predecessor organization, in 1966 and has served at DOE Headquarters in Washington, D.C., and operations offices in Idaho and Richland. He joined the ORO staff in 1979 as Assistant Manager for Public Safety in the Clinch River Breeder Reactor Plant Project Office.

-MORE-

A native of Everett, Massachusetts, Gross received a B.S. in mechanical engineering from Lowell Technological Institute and an M.S. in nuclear engineering from Purdue University.

He and his wife, Barbara, live in Knoxville and have two children: Dawn, 23; and Greg, 17.

-DOE-

News Media Contact: Danielle Jones, (615) 576-0885

R-90-002



Leon Lowery
Legislative Representative

ENERGY PROJECT
1525 New Hampshire Ave., N.W.
Washington, D.C. 20036

(202) 745-4877

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NEWS FROM

U.S. Senator Al Gore



(D - Tennessee) SR 393 Russell Building, Washington, D.C. 20510 (202) 224-4944

FOR IMMEDIATE RELEASE
Wednesday, November 1, 1989

Contact: Larry Stein (Sasser)
202-224-9587
Marla Romash (Gore)
202-224-7155
202-547-0806 (H)

STATEMENT OF
SENS. JIM SASSER AND AL GORE
on the Report of

The Monitored Retrievable Storage Review Commission

First of all, we applaud the MRS Review Commission for reaching a conclusion that we in Tennessee and others around the country reached a long time ago: the Department of Energy plan for an MRS facility doesn't make sense. It's not safer. It's not cheaper. And, we'll argue, there's no proof it's needed.

Secondly, however, the Commission's new plan would also be a mistake. The notion that we need interim storage at all is based on the totally unsubstantiated claim that some utilities are in imminent danger of running out of on-site storage space. Neither the Commission nor the Department of Energy is able to specify which utilities are in that position. We believe that on-site storage remains the best course while we work to implement the final repository solution called for under the law.

While we respect and appreciate the tremendous amount of work that's gone into this report, we can only conclude that its recommendations are as wrongheaded as the Department of Energy's original plans. There is absolutely no evidence presented that there is a need for a new interim storage facility. There is absolutely no evidence presented that on-site storage facilities will not meet our needs in the foreseeable future. The commission did not have the data needed to evaluate those critical questions. We need to be positively sure there's a problem before we set out to solve that problem.

The bottom line is this: any interim facility would remove the pressure for the permanent repository that we all agree is the only sensible long-term solution. We are disappointed that a majority of the commissioners do not recognize this fundamental point. We ought to be focusing our efforts on addressing the as yet unresolved questions surrounding the permanent repository rather than planning for an interim storage facility which, by all available evidence, is unnecessary.

##



STATE OF NEW YORK
DEPARTMENT OF LAW
180 BROADWAY
NEW YORK, N. Y. 10271

ROBERT ABRAMS
ATTORNEY GENERAL

January 31, 1990

Honorable George Mitchell
United States Senate
SR-176 Russell Senate Office Building
Washington, D.C. 20510-1902

RE: S. 1630; Concerning Radionuclides Amendment

Dear Senator Mitchell:

This letter, delivered to you on behalf of the undersigned State Attorneys General, is to urge deletion of a provision of S. 1630 which, if passed into law, will prohibit regulation of certain radioactive air emissions by the United States Environmental Protection Agency (EPA) and severely limit State authority to adopt similar regulations. As indicated by your comments in the Committee Report of S. 1630, you hold similar concerns with respect to the effect of this provision.

In the Clean Air Act of 1977, Congress directed the EPA under Section 122 to consider regulation of radioactive air emissions from all sources including those regulated or licensed by the Nuclear Regulatory Commission (NRC). Last year, in response to a court order, the EPA promulgated regulations under Section 112 of the Act to control radionuclide emissions as a hazardous air pollutant. The Act called for coordination of efforts between the EPA and the NRC in the regulation of these emissions.

In November, as the Senate Environment and Public Works Committee was considering amendments to the Clean Air Act, an amendment to S. 1630 was offered by Senator Alan Simpson and passed by voice vote. That amendment proposes to exempt radioactive air emissions associated with sources regulated or licensed by the NRC or an NRC "agreement State" from any EPA regulations, including recently promulgated radionuclide standards, in favor of exclusive regulation by the NRC pursuant to the Atomic Energy Act. The amendment was presented purportedly to avoid dual regulation by the EPA and the NRC. The actual effect of the amendment, however, is quite different.

First, if this amendment is left intact, air emissions from radioactive materials under NRC jurisdiction will no longer be subject to EPA regulations for radionuclides. Specifically, these sources will be limited only by the NRC's radionuclide emissions standard which can be 50 times less stringent than EPA's newly promulgated standard.

Second, by transferring all authority over these emission sources to the NRC, the States will be preempted from establishing their own more stringent standards for radioactive air emissions. Under Section 116 of the Clean Air Act, State authority to adopt stricter air emission standards clearly has been retained. There is no similar provision in the Atomic Energy Act. That Act has been found by the United States Supreme Court to preempt State regulation of radiation hazards. Therefore, the amendment in question would effectively prevent the States from exercising any control over harmful radioactive air emissions from sources regulated by the NRC.

Finally, this amendment may have an adverse effect on the cleanup of radioactive contamination pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (the Superfund Act). The Superfund Act provides a mechanism for the cleanup of all pollutants classified as "hazardous substances." Section 101(14) of the Act includes, within the definition of "hazardous substances," any hazardous air pollutant regulated under Section 112 of the Clean Air Act. The amendment will eliminate radioactive emissions produced by NRC regulated sources from the definition of hazardous air pollutants in the Clean Air Act and thus remove from the scope of the Superfund Act any radioactive air, soil or water contamination caused by these sources.

As you can see, the amendment, by removing both EPA and State authority to regulate significant radioactive air pollution, would be an unfortunate development. We encourage action on the floor of the Senate to delete this amendment.

Senator George Mitchell
Page 3

Thank you for your continuing efforts to assure that our environment remains safe for future generations.

Respectfully,

ROBERT ABRAMS
Attorney General of
New York

JOHN K. VAN DE KAMP
Attorney General of
California

DUANE WOODWARD
Attorney General of
Colorado

CLARINE NARDI RIDDLE
Attorney General of
Connecticut

JIM JONES
Attorney General of
Idaho

WILLIAM J. GUSTE, JR.
Attorney General of
Louisiana

JAMES M. SHANNON
Attorney General of
Massachusetts

FRANK J. KELLEY
Attorney General of
Michigan

HUBERT H. HUMPHREY, III
Attorney General of
Minnesota

ROBERT M. SPIRE
Attorney General of
Nebraska

JAMES E. TIERNEY
Attorney General of
Maine

BRIAN MC KAY
Attorney General of
Nevada

ANTHONY J. CELEBREZZE, JR.
Attorney General of
Ohio

DAVE FROMMAYER
Attorney General of
Oregon

ERNEST D. PREATE, JR.
Attorney General of
Pennsylvania

CHARLES W. BURSON
Attorney General and Reporter
of Tennessee

JIM MATTOX
Attorney General of
Texas

JEFFREY L. AMESTOY
Attorney General of
Vermont

KENNETH O. EIKENBERRY
Attorney General of
Washington

DONALD J. HANAWAY
Attorney General of
Wisconsin

cc: Senator John Glenn



STATE OF NEW YORK
DEPARTMENT OF LAW
120 BROADWAY
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January 31, 1990

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Senator George Mitchell
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BRIAN MCKAY
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Attorney General of
Ohio

DAVE FROHNMAYER
Attorney General of
Oregon

ERNEST D. PREATE, JR.
Attorney General of
Pennsylvania

CHARLES W. BURSON
Attorney General and Reporter
of Tennessee

JIM MATTOX
Attorney General of
Texas

JEFFREY L. AMESTOY
Attorney General of
Vermont

KENNETH O. EIKENBERRY
Attorney General of
Washington

DONALD J. HANAWAY
Attorney General of
Wisconsin

cc: Senator John Glenn

CONGRESSIONAL RECORD — SENATE

January 30, 1990

AMENDMENT No. 1220

On page 378, beginning with line 13, strike out all through line 21.

AMENDMENT No. 1221

On page 381, beginning with line 10, strike out all through line 2 on page 382.

AMENDMENT No. 1222

On page 381, line 14, immediately after "excluding" insert "emissions into the ambient air of".

On page 381, line 22, immediately after "excluding" insert "emissions into the ambient air of".

On page 382, between lines 2 and 3, insert the following:

(d) Notwithstanding any other provision of the Clean Air Act, or any other law, the regulation by the Nuclear Regulatory Commission of radioactive pollutant emissions into the ambient air shall not affect, modify, or preclude the authority of any State or political subdivision thereof to adopt or enforce any requirement respecting the control of such emissions.

NOTICES OF HEARINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LEAHY, Mr. President, I would like to announce a partial list of hearings that the Committee on Agriculture, Nutrition, and Forestry plans to hold for the 1990 farm bill:

February 1: Subcommittee on Agriculture and Stabilization of Prices. Hearing in preparation for 1990 farm bill: soybeans. SR332. 9:30 a.m.

February 6: Subcommittee on Agricultural Production and Stabilization of Prices. Hearing in preparation for 1990 farm bill: crop insurance. SR332. 9:30 a.m.

February 6: Subcommittee on Domestic and Foreign Marketing and Product Promotion. Hearing in preparation for 1990 farm bill: Export and Market Development Programs. SR332. 2:00 p.m.

February 7: Full Committee. Hearing in preparation for 1990 farm bill: the Administration's views. SR332. 9:30 a.m.

February 8: Subcommittee on Agricultural Research and General Legislation. Hearing in preparation for 1990 farm bill: grain quality enhancement. SR332. 9:30 a.m.

February 8: Subcommittee on Agricultural Credit. Hearing in preparation for 1990 farm bill: agricultural credit. SR332. 2:00 p.m.

February 20: Subcommittee on Agricultural Credit. Hearing in preparation for 1990 farm bill: agricultural credit. SR332. 2:30 p.m.

February 21: Full Committee. Hearing in preparation for 1990 farm bill: trade. SR332. 3:30 a.m.

February 22: Subcommittee on Agricultural Research and General Legislation. Hearing in preparation for 1990 farm bill: grain quality enhancement. SR332. 9:30 a.m.

February 27: Full Committee. Hearing in preparation for 1990 farm bill: "Hunger in America." SD G-50. 9:30 a.m.

March 1: Subcommittee on Agricultural Production and Stabilization of Prices. Hearing in preparation for 1990 farm bill: cotton. SR332. 9:30 a.m.

March 1: Subcommittee on Conservation and Forestry. Oversight hearing on the forestry title of the 1990 farm bill. SR332. 2:00 p.m.

March 2: Subcommittee on Agricultural Production and Stabilization of Prices. Hearing in preparation for 1990 farm bill: oil and honey. SR332. 10:00 a.m.

March 5: Subcommittee on Agricultural Production and Stabilization of Prices. Hearing in preparation for 1990 farm bill: rice. SR332. 9:30 a.m.

March 5: Subcommittee on Agricultural Credit. Hearing in preparation for 1990 farm bill: agricultural credit. SR332. 2:00 p.m.

March 6: Subcommittee on Agricultural Production and Stabilization of Prices. Hearing in preparation for 1990 farm bill: sugar. SR332. 10:00 a.m.

March 7: Full Committee. Hearing in preparation for 1990 farm bill: dairy. SR332. 9:30 a.m.

March 8: Subcommittee on Conservation and Forestry. Hearing in preparation for 1990 farm bill: conservation issues. SR332. 9:30 a.m.

March 8: Subcommittee on Agricultural Production and Stabilization of Prices. Hearing in preparation for 1990 farm bill: wheat. SR332. 2:00 p.m.

March 9: Subcommittee on Agricultural Research and General Legislation. Hearing in preparation for 1990 farm bill: noxious weeds. SR332. 9:30 a.m.

For further information, please call the committee at 224-2035.

COMMITTEE ON SMALL BUSINESS

Mr. BUMPERS, Mr. President, I would like to announce that the Small Business Committee has rescheduled its hearing on technology transfer and small business from February 22, 1990, to March 8, 1990. The hearing will be held in room 428A of the Russell Senate Office Building and will commence at 9:30 a.m. For further information, please call Joan Bready at 224-2016 or Scott Varady at 224-3052.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. BAUCUS, Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on January 30, 1990, at 9:30 a.m., to hold a hearing on the nominations of James Kolstad, of Colorado, to be Chairman, and Susan Coughlin, of Pennsylvania, to be a member of the National Transportation Safety Board; and Barry L. Harris, of Maine, to be Deputy Administrator of the Federal Aviation Administration.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. BAUCUS, Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in open session on Tuesday, January 30, 1990, at 2 p.m. to receive testimony on the implications of changes in the Soviet Union and Eastern Europe for Western Security.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. BAUCUS, Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Tuesday, January 30,

1990, at 9:15 a.m. for a hearing on "Teacher Excellence: Recruitment and Training."

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON MOD REHAB/HUD INVESTIGATIONS

Mr. BAUCUS, Mr. President, I ask unanimous consent that the MOD Rehab/HUD Investigations Subcommittee of the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate, Tuesday, January 30, 1990, at 9:30 a.m. to conduct hearings on the mission of HUD.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BAUCUS, Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, January 30, at 10 a.m. to hold a hearing on the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Treaty Doc. 100-20.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

DRUG-EXPOSED INFANTS

Mr. INOUE, Mr. President, yesterday at a luncheon sponsored by the Consortium on Children, Families and the Law, Dr. Theo Sonderegger and Prof. Josephine Gittler delivered a briefing on the issue of drug-exposed infants.

The consortium, comprised of the University of Hawaii, the University of Nebraska-Lincoln, State University of New York at Buffalo, University of Michigan, University of Virginia, and University of Pittsburgh, coordinates the network of participating institutions to facilitate independent and collaborative research on social, psychological, educational, economic, and legal issues affecting families. It disseminates the information in forms that will allow policymakers, governmental decisionmakers, and practitioners to take appropriate action.

Mr. President, I ask that the text of this briefing be printed in the RECORD. The briefing follows:

DRUG EXPOSED INFANTS: SUMMARY OF REMARKS OF THEO SONDEREGGER, Ph.D. AND JOSEPHINE GITTIER, J.D.

The real victims in the war against drugs, tragic though they may be, are not the well-publicized drug-users and drug-dealers; the real victims are the children born to today's drug-users and who, tomorrow, will constitute a large percentage of the members of our society. The infants being born today that endure the perinatal trauma induced by their parents' drug addictions, may experience throughout their lives the effects of their early drug exposure; the potential costs are incalculable to society. We, particularly members of the scientific, medical, social service, and legal professions, are beginning to work together with you, the policymakers, to recognize, treat, and prevent

UNITED STATES SENATE

WASHINGTON, DC 20540-1603

COMMITTEES
ARMED SERVICES
BANKING
BUDGET
ENERGY AND
NATURAL RESOURCES

January 31, 1990

Honorable Kenneth M. Carr, Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Carr:

I am writing in regard to standards recently issued by the U.S. Environmental Agency (EPA) concerning National Emission Standards for Hazardous Air Pollutants (NESHAP) under section 112 of the Clean Air Act for emissions of radionuclides.

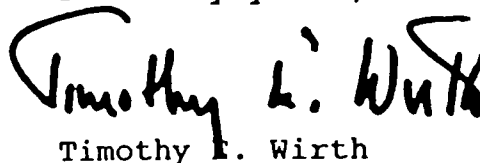
The Senate Environment and Public Works Committee recently reported a bill to amend the Clean Air Act which incorporated an amendment offered by Senator Simpson to eliminate regulation of Nuclear Regulatory Commission (NRC) licensees under both the Atomic Energy Act and the Clean Air Act. Among other things, his amendment would exclude NRC licensees from the radionuclide emission standards recently issued by EPA.

The NRC has objected to including NRC licensees in the radionuclide NESHAP claiming that to do so would be "duplicative regulation...with no attendant additional protection for the public health and safety". The NRC asserts that its current regulatory regime provides adequate protection against radionuclide emissions from these facilities.

In order to evaluate this legislative proposal, I am requesting additional information pertaining to the EPA NESHAP standards for NRC licensees and how the protections offered by the EPA standards compare to the current NRC regulatory program. Enclosed is a set of questions on this issue (I have sent a list of similar questions to the EPA). I would appreciate your response as soon as possible so that this information will be available to Senate members as they debate Clean Air legislation this week.

Thank you for your cooperation and assistance in this matter. If you have any questions, please contact Russ Shay on my staff at 224-5852.

Sincerely yours,


Timothy L. Wirth

Enclosure

Questions to U.S. Nuclear Regulatory Commission from Senator Wirth
Regarding the Regulation of Radionuclide Emissions from NRC Licensees

1. List the types of facilities that would be affected by nullifying the radionuclide emission standards (NESHAP) issued by EPA on November 1, 1989.
2. (a) What dose limit for members of the public does the NRC require for NRC licensees under Atomic Energy Act requirements?
(b) How does this compare to the EPA NESHAP standard set for NRC licensees?
3. (a) Describe the process used by NRC in arriving at the air emission dose limit for NRC licensees.
(b) Describe the process used by EPA in arriving at the NESHAP air emission dose limits for NRC licensees.
4. (a) Describe the NRC monitoring requirements for NRC licensees.
(b) How does this compare to the EPA's NESHAP air emissions monitoring requirements?
5. (a) Describe the NRC record-keeping and reporting requirements for NRC licensees.
(b) How does this compare to the EPA's NESHAP air emissions record-keeping and reporting requirements?
6. (a) Describe NRC's compliance requirements and procedures for NRC licensees.
(b) How does this compare to the EPA's NESHAP air emissions compliance requirements and procedures?
7. Has NRC found any NRC licensees that exceed the NESHAP air emissions standards?
8. (a) What standards would govern air emissions from NRC licensees if the EPA NESHAP standards for NRC licensees were nullified?
(b) How do these standards compare to the EPA NESHAP air emission standards?
9. (a) What is the emission standard for radon at uranium milling facilities under the NRC atomic energy act standard?
(b) What is the standard for radon emissions at uranium milling facilities under the EPA NESHAP standard?

10. How does the 10 rem effective dose equivalent limit under NESHAP compare to the 500 rem whole-body dose limit under NRC 10CFR20 in terms of maximum individual risk?
11. Please translate all above figures into maximum individual risk terms.

United States Senate

WASHINGTON, DC 20510

January 31, 1990

The Honorable William K. Reilly, Administrator
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

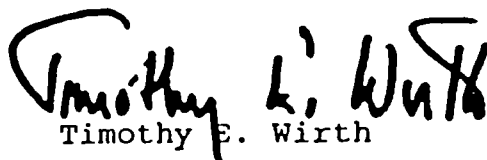
Dear Bill:

As the Senate continues its debate on Clean Air legislation, I anticipate considerable discussion on the issue of radionuclides regulation. This issue is very important to Colorado, and I have been making a special effort to become better informed on the effect of proposed Clean Air legislation on the current regulatory process.

I have requested some information from your Office of Radiative Programs concerning National Emission Standards for Hazardous Air Pollutants (NESHAP) under section 112 of the Clean Air Act for emissions of radionuclides. This information will be very helpful in the upcoming Senate debate on this issue.

Under the current schedule for debate on Clean Air legislation, the Senate debate on this issue will probably occur soon. I would appreciate your attention to a prompt response to this information request.

Sincerely yours,


Timothy E. Wirth

United States Senate

WASHINGTON DC 20510-8002

January 31, 1990

Mr. Richard Guimond, Director
Office of Radiation Programs
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Dear Mr. Guimond:

I am writing in regard to standards recently issued by the U.S. Environmental Agency (EPA) concerning National Emission Standards for Hazardous Air Pollutants (NESHAP) under section 112 of the Clean Air Act for emissions of radionuclides.

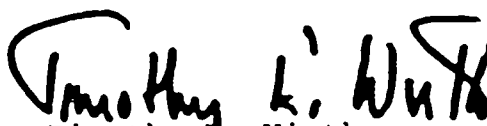
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The NRC has objected to including NRC licensees in the radionuclide NESHAP claiming that to do so would be "duplicative regulation...with no attendant additional protection for the public health and safety". The NRC asserts that its current regulatory regime provides adequate protection against radionuclide emissions from these facilities.

In order to evaluate this legislative proposal, I am requesting additional information pertaining to the EPA NESHAP standards for NRC licensees and how the protections offered by the EPA standards compare to the current NRC regulatory program. Enclosed is a set of questions on this issue (I have sent a list of similar questions to the NRC). I would appreciate your response as soon as possible so that this information will be available to Senate members as they debate Clean Air legislation this week.

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Enclosure

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3. (a) Describe the process used by EPA in arriving at the NESHAP dose limit for NRC licensees.

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10. How does the 10 rem effective dose equivalent limit under NESHAP compare to the 500 rem whole-body dose limit under NRC 10CFR20 in terms of maximum individual risk?
11. Please translate all above figures into maximum individual risk terms.



Dear Senator:

This letter is to seek your support for an amendment by Senator John Glenn to strengthen the Clean Air Act Amendments (S.1630) by striking language which would substantially weaken regulation of radioactive air pollutants.

In the closing days of the first session of the 101st Congress, Sen. Alan Simpson (R-WY) got an amendment to the Clean Air Act through the Environment and Public Works Committee that would dramatically change the way air emissions of radionuclides are regulated. In the name of eliminating "dual regulation" the Simpson amendment actually reduces protection for the public against hazardous radioactive air pollutants.

In the Clean Air Act Amendments of 1977, the Environmental Protection Agency was charged with determining whether radioactive pollutants should be listed as hazardous. EPA was directed to prepare standards for such pollutants which would assure public protection from them.

The Nuclear Regulatory Commission had issued standards for emissions under authority of the Atomic Energy Act (AEA). Because of NRC's weak standards and poor enforcement record, and because the AEA is preemptive of citizen and state enforcement tools, Congress gave this public protection role to EPA under the Clean Air Act.

Sen. Simpson's amendment would reverse this Congressional action and return us to a time of less protection. At a time when public outcry demands greater controls on the damage done by industrial activities to public health and the environment, this amendment marches into the past.

The Simpson amendment:

- o **Returns NRC licensees to a far weaker standard for emissions.** EPA limits public exposure to 10 millirems per year effective dose equivalent (a risk of additional fatal cancers of 1 in 10,000). NRC licensee limits are 500 millirems per year (additional risk of fatal cancers of 1 in 200.)

- o **Reverses the requirement that a "safe or acceptable" level of risk be determined based on health factors alone.** In the "Vinyl Chloride" decision (NRDC v. EPA) the D.C. Circuit Court of Appeals required this first step for evaluating the health effects of air emissions under the Clean Air Act, followed by the setting of a standard that provides "an ample margin of safety". The NRC has based its standard on what the industry can afford and not on what is necessary to protect public health.

- o **Takes away the rights of citizens, states and local governments to bring suit to compel enforcement.** The Clean Air Act allows judicial review of standards and suit to compel

enforcement of standards. Under the Atomic Energy Act no such suits are possible. States that are not "agreement states" under the AEA would be left with no enforcement mechanisms to control radionuclide air pollutants. Citizens and local governments would have no right to require action by the NRC when the Commission ignores violations of its standards.

o **Preempts the right of states and local governments to enact standards that are more stringent than the federal standard.** The Clean Air Act allows states and local governments to set stricter standards than EPA's standard. The Atomic Energy Act was determined to be preemptive of states by the Supreme Court (Northern States Power Co. v. State of Minnesota).

o **Prevents any improvement of standards required in S. 1630 from applying to radionuclides still regulated by EPA.** DOE facilities and others still under the Clean Air Act standard would not come under any upgrading of requirements for protection in the current amendments. but would be "grand-fathered" in.

The most recent study by the National Academy of Sciences revealed that radiation is far more dangerous than had previously been estimated. The report, known as BEIR V, reveals that estimates of cancer deaths from radiation are "three to four times higher" previous studies had indicated.

There are over 6,000 NRC licensees. EPA has said, "virtually every American lives within 50 miles of an NRC licensee."

At a time when standards for public protection are being toughened for all other industries, we must not weaken protection against these most dangerous of air pollutants.

We urge you not to reverse the gains for public protection made in the 1977 amendments. We urge you not to deny the mandate for improving protection against hazardous air pollutants that is the impetus behind the current amendments to the Clean Air Act. Sen. Glenn will offer an amendment to strike the Simpson provision. We urge you to support this amendment as vigorously as is in your power.

Leon Lowery
Legislative Representative
Environmental Action

Ken Bossong, Director
Critical Mass Energy Project
Public Citizen

Robert Yuhnke
Senior Attorney
Environmental Defense Fund

A. Blakeman Early
Washington Director
Pollution and Toxics Program
Sierra Club

David D. Doniger
Senior Attorney
Natural Resources Defense Council

Bill Magavern
Staff Attorney
U.S. Public Interest Research
Group

Michael Mariotte
Executive Director
Nuclear Information and Resource Service

Andrew Abernethy
Am. Nuclear Energy
Council

484-2670

Belone

EPA doesn't have to

promulgate regs for
radioisotopes under
air toxics

EPA has the authority but
doesn't want to use it and
good regs for air & water

{ NRC - 5 million

{ EPA - 25

{ NRC to make stronger

at order - EPA must issue
radioisotopes

* N/A re: non-NRC facilities i.e.
DOE

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TVA is regulated under
NRC.

NTH is supportive → medical
techs are in question.

pred-housing Glenn - remove provisions that
→ ~~most~~ states exercise
authority.
States reg.
- low level
- medical
wastes

Don Berkowitz - Breach
Lucy ——— - Simpson

litigations
do have
under AEA

NRC gen Council
Marty Naloch 492-1740



Leon Lowery
Legislative Representative

ENERGY PROJECT
1525 New Hampshire Ave., N.W.
Washington, D.C. 20036

(202) 745-4877

 **recycled paper**



Support the Glenn Amendment
to Preserve Radioactive Pollution Controls

Question: Do the Atomic Energy Act radionuclide emission requirements provide equal protection to public health and safety as the Clean Air Act requirements?

Senator Glenn will offer an amendment to the Clean Air Act to strike a provision inserted by Senator Simpson in the Senate Environment Committee. Senator Simpson's provision would eliminate current Clean Air Act authority to regulate radioactive air emissions from Nuclear Regulatory Commission-licensed nuclear facilities.

Supporters of the Simpson amendment argue that regulation of radioactive air emissions under the Clean Air Act is not needed because the regulatory system for radionuclides under the Atomic Energy Act is adequate to protect the public health and safety. This is simply not the case. Clean Air Act regulations offer far more substantial protections to the public than Atomic Energy Act regulations do. For instance:

o The Clean Air Act authorizes the Environmental Protection Agency (EPA) to set safety standards for radionuclide releases. In December 1989 EPA issued new standards (40 CFR 61) that set a far stricter standard for nuclear emissions than Atomic Energy Act standards.

EPA's Clean Air Act standards limit radiation doses to the public to 10 millirem per year from NRC-licensees from all pathways. In terms of risk, 10 millirem per year is approximately equivalent to a 3 in 10,000 individual lifetime chance of contracting fatal cancer. EPA - 10 millirem

By contrast, under the Atomic Energy Act, NRC limits doses to the public from uranium fuel cycle facilities (i.e. facilities associated with the production of nuclear power) to 25 millirem per year, however, the vast majority of NRC licensees only have to meet a 500 millirem limit per year from the air pathway only. The 500 millirem limit under 10 CFR 20 is approximately equal to a lifetime risk of fatal cancer of 140 in 10,000. NRC - URANIUM = 25
OTHERS = 500

In other words, NRC's Atomic Energy Act standard is approximately 50 times higher than the EPA Clean Air Act standard (500 millirem per year vs. 10 millirem per year) and the risk is approximately 150 times greater.

10 CFR 20 standards were developed and published in the late 1950's and, by NRC's own admission, "have not kept pace with more recent recommendations of scientific organizations to improve overall protection and establish a clear health risk rationale." (See Federal Register January 9, 1986 NRC-Proposed Revisions to 10 CFR 20.)

- o Atomic Energy Act requirements for assuring standards are being complied with are less stringent than EPA's Clean Air Act requirements.

The EPA Clean Air Act standards require each facility to make an annual determination of compliance with the 10 millirem dose limit. EPA has developed the COMPLY Computer Code to make calculating compliance easy for NRC licensees. NRC licensees are required to calculate annual doses to the public and report the results to EPA.

Under the Atomic Energy Act, most NRC licensees are not generally required to calculate doses to the public. In most cases, the NRC determines compliance by making on-site inspections of the facilities. However, with few inspectors and 6,000 facilities violations are likely to be missed.

- o Sec. 304 of the Clean Air Act authorizes citizens, states and local governments to take legal action when air emission standards are being violated.

Under the Atomic Energy Act states and citizens would have no recourse to compel regulatory agencies to enforce the standards.

- o Sec. 116 of the Clean Air Act authorizes states to adopt and enforce their own emission standards and their own requirements for control or abatement of air emissions. States can set requirements that are more stringent than federal requirements.

The Atomic Energy Act does not authorize states to set stricter standards for radionuclide air emissions. In fact, a United States Supreme Court ruling found that the Atomic Energy Act preempts the states' ability to set stricter standards.

There are over 6,000 NRC licensees. Virtually the entire U.S. population is potentially exposed to radioactive emissions from these facilities. The more we learn about radiation exposure risks, the more we realize the risks are greater than had previously been estimated.

Now is not the time for Congress to be weakening radiation controls.

Environmental Action urges your support for the Glenn amendment to preserve Clean Air Act regulation over radioactive air emissions.

TVA FAX Form

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Telecopy Numbers:

• Knoxville:

(615) 632-6634-Vice President, Communications

(615) 632-7581-State & Local Affairs

(615) 632-6783-Community Relations

(615) 632-4760-Media Relations

(615) 632-6712-Employee & Corporate Comm.

• Browns Ferry:

(205) 729-2675

• Chattanooga:

(615) 751-3561-Regional Public Affairs

(615) 751-6759

• Nashville:

(615) 360-1545

• Watts Bar:

(615) 365-8755

• Muscle Shoals:

(205) 386-2963

• Washington:

(202) 479-4421

• Sequoyah:

(615) 843-6996

Note: As we agreed here is the info on radionuclide
Call if you have any questions

To:

Katie McGinty

Verification Number: _____

Telephone Number of Receiving Machine: _____

Knoxville: _____ Chattanooga: _____ Muscle Shoals: _____

Nashville: _____ Washington: _____ Other: _____

From:

Tom Price - Washington

Extension: _____

Date:

9/20/90

Time: _____

Person Sending:

R. Johnson

Extension: _____

Number of Pages Sent (Includes Cover Sheet): _____

9

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Time Verified: _____

02 P 09/20/1990 14:35 FROM COMM-WASHINGTON

United States Senate

WASHINGTON, D.C. 20510

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September 19, 1990

The Honorable Max Baucus
United States Senate
706 Hart Senate Office Building
Washington, D.C. 20510

Dear Max:

As the conferees on S. 1630, the Clean Air Act Amendments of 1990, prepare to begin serious discussions on the air toxics provisions contained in Title III of the bill, we wanted to let you know of our personal interest in two issues pertaining to the regulatory program for the control of radionuclide emissions from facilities licensed by the Nuclear Regulatory Commission (NRC).

First, we want to let you know of our support for those provisions contained in the Senate bill that condition the exercise of authority by the EPA to promulgate additional regulations controlling such emissions, pursuant to the Clean Air Act, upon a determination by that agency that the current regulatory program developed pursuant to the Atomic Energy Act does not provide an ample margin of safety to protect the health of the public (section 112 (d)(11)).

As you well know, this approach received wide-spread support in the Senate, strikes an appropriate balance between the need to ensure adequate health and safety regulation and the need to wisely allocate limited federal and private industry resources, and deserves the full and vigorous support of the conferees. We know that we need not reiterate here all of the particulars with respect to the extensive regulations that have been developed under the Atomic Energy Act to control radionuclide emissions from NRC licensed facilities, but it is important to remember that the EPA is involved in that program through its responsibility to develop generally applicable environmental standards of radiation protection.

Senator Max Baucus
September 19, 1990
Page Two

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This provision is important for the nuclear energy industry as well as having dramatic implications for other beneficial uses of radioactive materials in university research programs and the health industry, as evidenced by the support for this provision by the National Institute for Health, the American College of Nuclear Physicians, the Society of Nuclear Medicine, the Association of American Medical Colleges and the American Council on Education, as well as the EPA.

The second issue relates to the appropriate balance between the federal government and the states with respect to the development of radiological protection standards. As you know, a central feature of the Atomic Energy Act is its recognition of the unique nature of nuclear regulation and the need for a strong federal program. The Clean Air Act has historically taken the tack that the federal government should set minimum standards, yet states and localities should be free to set more stringent standards to account for local conditions. Obviously, with respect to the issue of radionuclide emissions, the philosophy of the two statutes are in conflict.

This conflict is evident in two provisions in the Senate bill. The first seemingly grants states and localities the authority to set more stringent standards (the second sentence of section 112 (d)(11)), and the second restricts state authority to set standards to the extent that states would be prohibited from establishing such standards under the Atomic Energy Act (section 112 (m)).

We would respectfully urge the Senate conferees to support a compromise between these two provisions that would recognize the authority of states to set more stringent standards than those established by the federal government so long as the state were able to establish that more stringent standards were necessary from the standpoint of public health and safety. Moreover, we believe that the states should not discriminate among the various source categories in the establishment of any more stringent standards. We believe that notions of fundamental fairness and sound public health policy dictate the need for such an approach.

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Senator Max Baucus
September 19, 1990
Page Three

We need not tell you that this issue is one that has generated controversy in the past, and it is our belief that a compromise along the lines we have suggested is an appropriate way of facilitating a resolution of an issue that has tremendous implications for the energy options facing the Nation.

Sincerely,

NUCLEAR ENERGY INDUSTRY POSITION PAPER
REGARDING STATE AUTHORITY OVER EMISSIONS FROM
NRC LICENSED FACILITIES

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Summary

The nuclear energy industry believes that it is important for the Congress to clarify the federal role in matters related to radiological health and safety. The Atomic Energy Act has provided a workable framework for over thirty five years and that framework should be retained. Allowing the states to promulgate regulations governing the airborne releases of radionuclide emissions from facilities licensed by the Nuclear Regulatory Commission, without regard to the question of whether such regulations are necessary to protect public health and safety, raises serious questions as to the ability of the United States to pursue the future use of standardized nuclear energy plants and threatens to unravel the nuclear waste disposal system created by the Congress over the past decade.

Discussion of the Issue

Since passage of the Atomic Energy Act of 1954, it has generally been held that, with limited exceptions, the federal government has had the singular responsibility for the promulgation of regulations designed to protect public health and safety from the radiological hazards associated with the development of the civilian nuclear energy industry. Those regulations are extensive and, with respect to the radionuclide emissions from nuclear energy plants, are incorporated into the designs and licenses for every such facility operating in this country.

Recently, however, some have suggested that the Congress, in reauthorizing the Clean Air Act in 1977, modified this longstanding policy and granted to the States the authority to regulate radionuclide emissions from facilities licensed pursuant to the Atomic Energy Act. Moreover, it has been argued that such authority is not contingent upon the need to demonstrate that any risks to public health or safety or the environment exist.

If these arguments are accepted or codified, it will become extremely difficult for the United States to continue to pursue the development of the next generation of advanced standardized nuclear energy plants. This is due to the fact that the radionuclide emissions from such facilities are controlled as a function of facility design. If the federal government certifies a design with emission levels based upon one set of health or technology based criteria, yet the states are free to set a lower emission standard unrelated to any reasonable criteria, the efforts to develop a standardized nuclear energy plant program in the United States will have been wasted.

In addition, the ability of states to set radionuclide emission limitations without regard to public health and safety factors, will likely unravel the program established by the Congress for the disposal of high level nuclear waste.

It should be noted that current federal standards established under the Atomic Energy Act are the result of the efforts of both the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission. The EPA sets

**PHOTOCOPY
PRESERVATION****NUCLEAR ENERGY INDUSTRY POSITION PAPER
REGARDING DUAL REGULATION OF RADIONUCLIDE EMISSIONS
PURSUANT TO THE CLEAN AIR AND ATOMIC ENERGY ACTS****Summary**

The nuclear energy industry believes that the current regulatory programs of the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC), pursuant to authorities contained in the Atomic Energy Act, provide a predictable, stable and sound basis for controlling the airborne emissions of radionuclides from facilities licensed by the NRC. These regulatory programs have been recognized by the EPA as protecting public health and safety with an ample margin of safety. Accordingly, provisions in both the House and Senate passed Clean Air bills relating to the establishment of a new EPA regulatory program pertaining to hazardous air pollutants should specifically exempt radionuclide emissions from NRC licensed facilities.

Discussion of the Issue

Until 1977, the regulation of radionuclide emissions from NRC licensed facilities was solely governed by provisions contained in the Atomic Energy Act (AEA). Pursuant to that Act, the EPA establishes generally applicable environmental standards limiting public exposure to radiation from such facilities. The NRC enforces these standards within each facility site.

As a part of the 1977 Clean Air Act Amendments, however, Congress directed the EPA to determine whether radionuclide emissions, generally, including radionuclide emissions from such facilities caused or contributed to human health problems. If EPA made such a determination, moreover, Congress directed the agency to determine under what section of the Clean Air Act such emissions should be regulated and to promulgate appropriate emission standards.

Although the EPA has determined that radionuclide emissions are in general potentially hazardous, and has determined that regulations (called NESHAPS) limiting such emissions should be promulgated under the Clean Air Act, the agency has never issued a final regulation applying these regulations to NRC licensed facilities. Rather, the agency has consistently determined that radionuclide emissions from NRC licensed facilities are already being controlled under the Atomic Energy Act in a manner that adequately protects public health and safety with an ample margin of safety. The agency has, by way of contrast, established NESHAPS for other sources of radionuclide emissions that are not similarly controlled.

Senate and House Provisions

Generally unhappy with the time consuming manner in which the current law, which bases emissions controls for hazardous air pollutant standards, has been implemented, both the House and Senate passed Clean Air bills establishing a new regulatory approach based (at least initially) upon

STATE AUTHORITY UNDER THE CLEAN AIR ACT

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Until 1977, Congress consistently indicated, and the courts confirmed, that the regulation of radiological hazards associated with the civilian nuclear energy program are derived from authorities contained in the Atomic Energy Act. With respect to the emission of radionuclides from nuclear energy facilities, the Atomic Energy Act regulatory program requires first, the EPA to develop generally applicable environmental standards limiting the emissions from all elements of the uranium fuel cycle; and second, the NRC to enforce such standards within each facility's boundaries.

In 1977, however, during the reauthorization of the Clean Air Act, the Congress directed the EPA to determine whether additional regulations, pursuant to that Act, were necessary to protect public health and the environment from radionuclide emissions. In the past thirteen years, although the EPA has determined that some Clean Air regulations are necessary for certain radionuclide sources, it has also determined that no additional regulations are required for facilities licensed by the NRC. The EPA has consistently found that the Atomic Energy Act regulations already protect the public with an ample margin of safety.

Some have recently argued that the 1977 Clean Air Act amendments grant the states and their political subdivisions the authority to promulgate radionuclide emission standards, notwithstanding the fact that the federal government has found that such additional regulations are not necessary. Moreover, these states and localities have argued that their authority does not require them to first make any determination that a health problem exists. Finally, they have argued that they may promulgate different standards for different types of facilities so that, for example, they can set one standard for a hospital using nuclear medicines, another for nuclear energy plants, and a third for different types of nuclear waste facilities.

If the States are allowed to exert this type of unfettered authority, the consequences for the use of nuclear materials in the United States would be seriously jeopardized. The states could, for example:

- o set unattainable standards for existing nuclear energy plants that could jeopardize the continued operation of 20 percent of this Nation's electricity supply;
- o set standards for the operation of a high-level nuclear waste repository that would preclude the construction or operation of any such facility;
- o prevent the development of a new generation of standardized, advanced reactor designs and thereby eliminate their use as an option in the development and implementation of a national energy strategy;
- o prevent the operation of the low-level waste disposal system created by the Congress in the past decade;

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- o disrupt the production, distribution, and application of nuclear medicines by doctors and hospitals; or
- o otherwise adversely impact on civilian research efforts undertaken by universities and others into beneficial uses of nuclear materials.

The nuclear energy industry believes that the conferees should adopt an amendment to the Clean Air Act which recognizes the unique federal role in the development of extensive EPA and NRC regulations, promulgated under the Atomic Energy Act, that already limit radionuclide emissions to levels that have been determined to protect the public's health and safety with an ample margin of safety.

Nucs + Clean Air

Leon Lowry

Envtl Action

budget of
American
Mining
Congress

Simpson amend
Nuclear facilities

→ only Clean Air
Act is under AEA

→ state loses pt.
to draft reg

totally preemptive

MRS implications

also effects DOE facilities →
Nicks Simpson

wld still be under
CAA - any engineering wld
not apply to point nuclear
emissions → old reg acts

be grandfathered in (12/5/89)

DOA v. NRC std

→ in different forms.

limit 10 mCi/yr

3

for radioactive waste

for uranium fuel

25 mCi/yr

for thorium

75 mCi/yr

→ can not be removed

NRC

EPA

1 in 10⁴

v. 1 in 10⁻⁴

* Bier v. Ford & want to
re-evaluate & Radiation 4-14X
as much cancer as earlier thought

4-4451

Bob
already

v. Lucinda —

Glenn — 3 amendments
- ① partially preserve
state reg.

needed
also for
preservation of
state reg.
state wa
La state wa
everyone
can see light
to go.

② + ③ — together
strike Simpson.

* Excess income
striking the Amendment.

TVA

Nash Fuel Mfg. Facility
- Evansville
Fayetteville TN.

745-4877

Write letter to EPA & NRC →
to compare plans