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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

September 14, 1999

MEMORANDUM TO: Chairman Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Dennis K. Rathbun, Director *DR*
Office of Congressional Affairs

SUBJECT: STATUS OF ISSUES IN THE 106TH CONGRESS

Attached for your information is a summary and update of issues that are relevant to the NRC and being monitored by the Office of Congressional Affairs. We will keep you apprised of progress on these issues and any other significant new issues that may arise.

Attachment:
As Stated

cc: EDO
OGC/Cyr
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OPA
OIP
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CIO
ACRS
ACNW
ASLBP
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INDEX
STATUS OF ISSUES
IN THE 106TH CONGRESS

September 1999

	Page Number
I. BUDGET	
A. NRC FY 2000 Appropriation	1
B. NRC Authorization- Legislative Proposals- User Fees	1
C. Two-Year Budget Cycle	3
II. PERFORMANCE PLAN, FINANCIAL STATEMENT, AND PERFORMANCE BUDGETING	3
III. NRC COMMISSIONER NOMINATION	4
IV. ISSUES AND LEGISLATION	
A. Civil Service Bills	4
B. Decommissioning and Decontamination	5
C. Electricity Restructuring	6
D. External Regulation of DOE Facilities	6
E. Gaseous Diffusion Plants	7
F. High-Level Waste	7
G. International Issues	7
H. Price Anderson Act Renewal	8
I. Regulatory Reform	8
J. Tritium Production	9
K. Uranium Mill Tailings	9
L. Y2K Problem	10

STATUS OF ISSUES

I. BUDGET

A. NRC FY 2000 APPROPRIATIONS

On June 16, 1999, the Senate approved the FY 2000 Energy and Water Development Appropriations Bill, S. 1186, by roll call vote 97-2. The Senate approved the NRC's Salaries and Expenses of \$465.4 million and the Inspector General received \$5 million, for a total NRC appropriation of \$470.4 million.

The Senate Report 106-58 included language that was favorable to the NRC. The Report also states that "In previous years, the Committee directed a review of the benefits of external regulation of the Department's (DOE) facilities and funded pilot programs to explore such arrangements in detail. The Committee has determined that the Department's unique responsibilities and facilities too rarely have non-federal analogs with existing, appropriate regulatory schemes. As a result, the Committee no longer contemplates external regulation of the Department's facilities."

On July 27, 1999, the House of Representatives passed H.R. 2605, the FY 2000 Energy and Water Development Appropriations Bill, by roll call vote 420 yeas, 8 nays, and 6 not voting. The House approved the NRC's Salaries and Expenses of \$455.4 million, \$10 million less than NRC's request and what was provided in the Senate bill. The House provided \$6 million for the Inspector General, one million more than the Senate. The total NRC appropriation from the House is \$461.4 million.

The House Report 106-253 differs from the Senate's with regard to external regulation of DOE. The House would provide continued funding for the pilot program on external regulation. Also, it urges the Commission to consider submitting legislation to repeal statutory organizational requirements; requests a report on lessons learned from initial license renewal reviews and the actions being taken to ensure that the two-year timetable will be sustained and improved upon; and directs the Commission to examine regulatory reform measures underway and complete several activities by specific dates.

Pertinent pages from the House and Senate reports are attached. The Senate has appointed conferees. The Energy and Water Conference is not yet scheduled; it is expected to be a difficult Conference due to differences in priorities and funding allocations.

B. NRC AUTHORIZATION - LEGISLATIVE PROPOSALS - USER FEES

The House Commerce Committee Energy and Power Subcommittee's Chairman, Joe Barton (R-TX) and Ranking Minority, Ralph Hall (D-TX), introduced H.R. 2531, The Nuclear Regulatory Commission Authorization Act for Fiscal Year 2000. Title I of the bill is NRC's authorization-- which extends NRC's authority to collect approximately 100% of its budget through user fees to September 30, 2004, and provides for cost recovery from Government agencies. Title II of the bill consists of NRC's legislative proposals.

The legislative proposals would accomplish the following objectives:

1. Authorize guards to carry firearms at certain NRC-licensed or certified facilities.
2. Make unauthorized introduction of weapons at facilities subject to licensing or certification by the NRC a Federal crime.
3. Make it a Federal crime to sabotage a production, utilization, waste storage, waste treatment or waste disposal, uranium enrichment or nuclear fuel fabrication facility during its construction, if the action could jeopardize public health and safety, or to sabotage a uranium enrichment or nuclear fuel fabrication facility during its operation.
4. Make clear that in the case of a combined construction and operating license the initial duration and the commencement of the licensing period are consistent with the period provided for situations where there are separate construction and operating licenses.
5. Elimination of the restriction on foreign ownership of power reactors and research reactors.
6. Elimination of the Commission's antitrust review authority with respect to pending or future initial applications for a license to construct or operate a utilization or production facility.
7. Make clear that, with very limited exception, the standards issued by the Commission and Agreement States govern cleanup of Atomic Energy Act material at facilities licensed by them.
8. Elimination of the requirement that the hearing process associated with the NRC licensing of uranium enrichment facilities must be "on the record."
9. Allow a Commissioner whose term has expired to continue in office for a limited period of time if a successor has not been confirmed.
10. Provide the NRC with general gift acceptance authority.
11. Elimination of the requirement that the NRC maintain an office for the service of process and papers within the District of Columbia.

On July 21, 1999, the Subcommittee held a hearing on the NRC's reauthorization and H.R. 2531 at which NRC testified along with EPA, NEI, and NRDC. The markup for H.R. 2531 has not been scheduled.

During the 106th Congress, the NRC has provided the House and Senate with four briefings specifically on these authorization/legislative proposals/fee issues. During these briefings, and during the July 21 hearing, concerns were expressed with regard to proposals 5, 7, and 8. Although it did not come up during our briefings, we understand that the Senate may object to proposal 9 (extension of Commissioner terms).

On July 22, 1999, NRC staff met with the Senate Environment and Public Works Majority and Minority staffs to discuss proposed legislation to extend the authority of NRC to collect fees. They asked for our comments on S. 2090, which was introduced last year. The Committee staff was considering whether to include the fee proposals in an authorization bill or to introduce a fee bill such as S. 2090. The Senate has not, at this time, introduced either NRC authorization or fee legislation.

Taxpayers Defense Act

On July 29, 1999, the Nuclear Energy Institute testified before the House Judiciary Committee's Subcommittee on Commercial and Administrative Law in favor of the Taxpayers Defense Act. The NEI testimony focused on the industry's payments for the Nuclear Waste Fund and NRC's user fees. They believe that while the Act may not solve all the industry's problems in this regard, it would provide a degree of protection against arbitrary fee increases. The Act would require the Congress, each year, to enact into law at least a portion of NRC's Part 171 annual fee rule. The bill has been introduced in both Houses; neither bill has been reported out of subcommittee.

C. TWO-YEAR BUDGET CYCLE

The Senate Budget Committee and Senate Governmental Affairs Committee held a joint hearing to review budget process reform legislation. Senators Domenici (R-NM), Thompson (R-TN), and Lieberman (D-CT) introduced S. 92, the Biennial Budgeting and Appropriations Act. The bill would convert the annual budget cycle, appropriations and authorization process to a two-year cycle.

Senator Domenici sponsored S. 93, a comprehensive budget process reform bill -- The Budget Enforcement Act of 1999, which incorporates the biennial bill, but also includes provisions which: (1) curb the abuses of emergency spending; (2) set aside and protect the Social Security surplus; (3) make way for tax relief that does not tap Social Security surpluses; and (4) provide that we never again incur a government shutdown because of failure to enact appropriations (establishes an automatic continuing resolution.) Both of these bills have been referred jointly to the Budget and Governmental Affairs Committees. On March 10, 1999, S. 92 was reported to the Senate from the Committee on Governmental Affairs; no further action was taken on S. 93. Legislation for biennial budgeting was introduced in the House, but has not been reported out of committee.

II. PERFORMANCE PLAN, FINANCIAL STATEMENT, AND PERFORMANCE BUDGETING

In April, the House Government Reform Committee evaluated agencies' FY2000 **performance plans**; the NRC received a score of 65 out of 100, which placed the NRC in the second tier of agencies. Last year, the NRC received a score of 55, but at that time that score placed the agency in the first tier. The Commerce Department was referenced as having a particularly outstanding plan; its plan has been obtained by the NRC staff for format review. Although Congressional staff noted that the NRC is implementing changes that are not reflected in the plan, they also commented that more detail was needed on the relevance of "risk informed" and "performance based" regulation to the agency's day-to-day operations. Congressional staff also questioned how the NRC validates the quality of incoming data from the industry.

The House Government Reform Committee's Subcommittee on Government Management, Information, and Technology held a hearing in March to announce Chairman Horn's (R-CA) report card on audits of agencies' **financial statements**. The audits are required by the Government Management Reform Act of 1994; this report card was based on FY 1998 audits. The NRC received a D+; previous grades were B- for FY 1997 and A for FY 1996. Eleven of the 17 agencies graded received D's or F's. Agencies were graded on reliable financial information, effective internal control, and compliance with laws and regulations. The NRC received a yes for the first category but a no for the others.

Interestingly, the same Subcommittee held a hearing in July 1, 1999, at which NRC's **performance budgeting** process was highlighted as being among the government's finest. CFO Jesse Funches testified along with other outstanding agencies, EPA and HHS/Administration for Children and Families; GAO and OMB also were on the panel. GAO commended NRC for changing its budget structure "to align with its strategic goals," for clearly indicating the "estimated costs of a given level of performance" and showing "which goals would be primarily affected by changing the level of program activity funding." During the hearing, GAO commended the NRC for changing its budget structure to align with its strategic goals, for clearly indicating the estimated cost of a given level of performance, and for showing which goals would be primarily affected by changing the level of program activity funding.

There was discussion of a pilot program; those agencies participating in the pilot were expected to develop budgets that show how performance would change if they received more or less allocations than requested. The Government Performance and Results Act required OMB to designate at least five agencies to conduct pilot programs, which were scheduled to start in FY 1998. At the time of the hearing, OMB had no definite plans for proceeding with the performance budgeting pilot programs. The Subcommittee was greatly concerned about the delay and wanted assurance that OMB would move ahead as soon as possible. During the FY 2001 Budget formulation process, OMB will select agencies to pilot a "performance budget" for specific programs.

III. NRC COMMISSIONER NOMINATION

On August 5, 1999, the Senate received the nomination of Richard A. Meserve to be a member of the NRC. In the White House press release on the nomination, the President stated his intention to designate Dr. Meserve as Chair upon appointment. With numerous nominations pending before the Senate Environment and Public Works Committee, a confirmation hearing to consider a group of nominees in the third or fourth week of September may be scheduled, according to Committee staff.

IV. ISSUES AND LEGISLATION

A. CIVIL SERVICE BILLS

A variety of civil service bills have been under considered during the 106th Congress. In early August, the Senate Governmental Affairs Committee ordered favorably reported S. 1232, correction of retirement coverage errors caused during the initial change from CSRS to FERS, and S. 1334, allowing federal employees to take 7 days paid leave for bone marrow donations and 30 days paid leave for organ donations. The House passed H.R. 416, its own retirement correction bill, on March 23, and approved a companion donation bill, H.R. 457, in July.

Pay Raise

The civil service pay raise, effective in January 2000, will be 4.8%. Conferees to H.R. 2490, the FY 2000 Treasury, Postal Service and General Government appropriations bill agreed to this pay raise. The bill also contains a provision increasing the pay of Members of Congress by \$4,600, to \$141,273. Since civil service pay is capped at the congressional level (currently \$136,673) this pay raise would thereby increase the cap.

B. DECOMMISSIONING AND DECONTAMINATION

FUSRAP

The House and Senate passed Energy and Water Development Appropriations bills that would appropriate funds to the Army Corps of Engineers to clean up FUSRAP sites. In explaining its provisions, the House Committee in its report stated that it did not intend the NRC to license the Corps for FUSRAP cleanups.

Superfund Reauthorization

The Senate Environment and Public Works Committee has been unable to craft a comprehensive bill that a coalition of Republicans and Democrats can accept. S. 1090, "The Superfund Program Completion Act of 1999," went to markup but no vote was held. It is unlikely that S. 1090 or any other comprehensive bill will be considered this session. More narrowly focused bills to amend Superfund have a greater chance of movement. One such bill is S. 1528, introduced by Majority Leader Trent Lott (R-MS) and Minority Leader Tom Daschle (D-SD), which would exempt recyclers from Superfund liability.

In the House, Representative Sherwood Boehlert's (R-NY) comprehensive Superfund reauthorization bill, H.R. 1300, has gathered bipartisan support from a majority of the House Transportation and Infrastructure Committee. The Administration has expressed its opposition to the bill and a contentious Committee markup is expected. The House Commerce Committee has yet to act on the legislation.

EPA House Appropriations Report Language on Radiologically Contaminated Sites

The FY 2000 House Appropriations Committee Report, H. Rept. 106-286, for the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies (including EPA) has been issued. The report, as in previous years, contains language stating that EPA should defer to the NRC for cleanup of NRC licensed sites. This year, however, the report acknowledges the EPA may have special expertise that may be of use to NRC for site cleanups. The report directs NRC and EPA to enter into a MOU that clarifies EPA's involvement when it is requested by NRC. The NRC and EPA are further directed to report to the Appropriations Committee, no later than May 1, 2000, on the development of the MOU.

H.R. 2684 has passed the Rules Committee and is now ready for consideration by the full House.

C. ELECTRICITY RESTRUCTURING

Congress continues its lengthy consideration of electricity restructuring issues, with the debate remaining focused on whether Congress needs to act in the face of states moving ahead on their own to advance competition in the electricity sector. Some believe that just a narrow bill is needed to enhance competition by repealing PURPA and PUHCA and to promote reliability, while others believe that federal language is needed to protect residential and low income ratepayers and to promote alternative energy sources. Representatives Barton (R-TX) and Bliley (R-VA), chairs of the pertinent House Subcommittee and Committee, respectively, hope to mark up a bill by mid-September. Chairman Murkowski (R-AK) of the Senate Energy and Natural Resources Committee might move a bill by late September. The Administration's bill, introduced as S. 1047 and S. 1048 in the Senate and H.R. 1828 in the House, contains provisions requested by the NRC pertaining to the elimination of NRC's antitrust authority and the treatment of decommissioning funds in bankruptcy.

D. EXTERNAL REGULATION OF DOE FACILITIES

The Senate Armed Services Committee report on the FY 2000 Defense Authorization Bill, S. 1059, echoed the Senate Appropriations Committee regarding external regulation of DOE facilities. The Senate Armed Services Committee praised the Defense Nuclear Facilities Safety Board for the work they have been doing regarding DOE defense nuclear facilities. The Committee added that they do not support any move toward external regulation of DOE defense nuclear facilities. They also noted that the Secretary of Energy has also put the external regulation effort on hold.

H.R. 1401, the National Defense Authorization Act of FY 2000, was silent on the future of external regulation for DOE facilities. The Conference Committee report has been issued and should be voted on by both Houses in September. It does not address external regulation of DOE.

H.R. 1656, the DOE Commercial Application of Energy Technology Authorization Act of 1999, was approved by the House Committee on Science on May 26, 1999. The bill provides regulatory authority to the NRC regarding federally owned or occupied non-military energy laboratories, including responsibilities with respect to accelerator-produced radioactive material and ionizing radiation generating machines. After reporting the bill, the Science Committee's Subcommittee on Energy and Environment held a hearing on the subject on July 22, 1999. The NRC Chairman, DOE, OSHA, and GAO testified at the hearing.

H.R. 1656 has also been referred to the House Committees on Commerce and Education and the Workforce. Future House action is uncertain. There is no comparable bill in the Senate.

Additionally, the Senate Committee on Appropriations included explicit report language (Senate Report 106-58) that would halt any further action for external regulation of DOE facilities; however, the House Appropriations Committee included funding to continue with the pilot effort (see I-A, NRC FY 2000 Appropriations). The Energy and Water Development Conference is still not scheduled.

E. GASEOUS DIFFUSION PLANTS (GDP)

The Oversight and Investigations Subcommittee of the House Commerce Committee has been conducting an investigation into allegations of radiological contamination and unsafe conditions at the Paducah, KY, GDP facility. The allegations center on past practices at the facility by the Department of Energy (DOE), prior to privatization and certification of the U. S. Enrichment Corporation. These issues have been identified in articles in the *Washington Post* and elsewhere. The Subcommittee is holding a hearing on these issues on September 16 and NRC has been asked to testify about current conditions at both the Paducah and Portsmouth, OH, facilities. NRC staff has briefed Subcommittee staff on a number of occasions and has pointed out that the allegations being raised are "legacy" issues which stem from DOE oversight of the facilities. NRC staff has maintained that in its areas of responsibility the facilities are now being operated in a manner that adequately protects public health and safety and the environment.

F. HIGH-LEVEL WASTE

The House Commerce Committee passed the comprehensive high-level waste bill, H.R. 45, The Nuclear Waste Policy Act of 1999, on April 21, 1999. The bill is now ready for consideration by the full House.

The Senate Energy and Natural Resources Committee passed a substitute version of its comprehensive high-level waste bill, S. 608, The Nuclear Waste Policy Amendments Act of 1999. The new bill is S. 1287. It is ready for consideration by the full Senate.

On August 4, 1999, President Clinton nominated Ivan Itkin of Pennsylvania to be the new Director of the Office Of Civilian Radioactive Waste Management (OCRWM) at the Department of Energy. The Senate Energy Committee is planning to hold a hearing on his nomination on September 15.

On-Site Storage of Spent Nuclear Fuel

Rep. Merrill Cook (R-UT) introduced H.R. 1309, The Nuclear Waste Protection and Responsible Compensation Act. This bill would, among other things, prohibit spent nuclear fuel from being transported offsite for away-from-reactor storage until a permanent disposition program is issued by the NRC. The bill was referred to the Commerce Committee's Energy and Power Subcommittee. No further action is anticipated.

G. INTERNATIONAL ISSUES

Withholding U.S. Funds for IAEA Programs in Iran

On July 19, 1999, the House passed H.R. 1477, a bill introduced by Representative Menendez (D-NJ) which will prohibit the International Atomic Energy Agency (IAEA) from using U.S. funds for Iran's nuclear power program unless the State Department determines that such programs and projects are consistent with U.S. nuclear nonproliferation and safety goals. The bill has been referred to the Senate Committee on Foreign Relations. Senator Campbell (R-CO) introduced S. 834, a companion bill on April 20, 1999. No action has taken place in the Senate.

State Department Authorization Bill

Both the House and Senate have passed their version of the State Department Authorization bill. S. 886 was passed on June 22 and H.R. 2415 was passed on July 21. The Senate bill contains a provision that prohibits an executive branch agency from imposing any new reporting obligation on the U.S. nuclear industry to meet implementation needs of the Convention on Nuclear Safety. In addition, there is a provision that urges the State Department in consultation with the NRC to ensure that the International Nuclear Regulators Association (INRA) functions are to the maximum practical extent implemented in connection with the Nuclear Safety Convention. It also directs the President to submit a report to Congress justifying continuing activities which in any way duplicate an activity pursuant to the Convention on Nuclear Safety. These provisions are not included in the House bill.

The House bill includes a section in which no license may be issued for export of any nuclear material, facilities, components, or other goods directly or indirectly to North Korea until the President reports to the House and Senate that certain conditions have been met. The Senate bill is silent on this issue. The House and Senate have yet to meet to conference this legislation.

Security Assistance Act of 1999

On July 28, 1999, the Senate Foreign Relations Committee approved legislation which will require Congress to be notified 14 days before a U.S. company receives an export license authorizing exports to nuclear weapons states that are not members of NATO. Senator Murkowski (R-AK), Chairman of the Senate Energy and Natural Resources Committee has written Senator Helms, Chairman of the Senate Foreign Relations Committee expressing his concerns about this legislation. It is possible this provision could be put into the State Department Authorization bill during conference.

Convention on Nuclear Safety

On March 17, 1999 the Committee on Foreign Relations held a hearing on the Convention on Nuclear Safety. The Senate ratified the Convention on March 25, 1999. The Convention on Nuclear Safety was then signed by the President on April 9, 1999.

H. PRICE-ANDERSON ACT RENEWAL

The Price-Anderson Act expires on August 1, 2002, although existing NRC coverage would continue in the absence of legislation. Congressional action is required for renewal. No legislation or hearings are expected in this session of Congress. The DOE and the NRC have submitted separate reports to Congress with their views on renewal.

I. REGULATORY REFORM

A number of bills addressing various aspects of regulatory reform are pending before Congress. These bills are of interest to the NRC because they could add steps, possibly costly, to the rulemaking process. In May, the Senate Governmental Affairs Committee reported out S. 746, **Regulatory Improvement Act**. This bill mandates risk assessment and cost benefit analyses of all major rules. The NRC wrote to the Committee this Spring, stating its opposition due to the possibility of OMB review of the substance of every proposed and final rule issued by

the agency; the bill retains this objectionable review. The report on S. 746 was issued in July; there is no companion bill in the House.

In early August, the Senate Governmental Affairs Committee ordered to be reported favorably S. 1214, the **Federalism Accountability Act**. Under S. 1214, rulemaking would have to explicitly state that federal preemption was intended and describe what alternatives to preemption were considered. If federal law or regulations are silent regarding preemption of state or local law, the assumption will be that no preemption has occurred. The House Government Reform Committee postponed a scheduled markup of a companion bill, H.R. 2245, before congressional recess because there were so many amendments to be offered.

The **Regulatory Right-to-Know Act** (H.R. 1074 and S. 59), requiring an annual assessment of the costs and benefits to the private sector of rulemaking requirements, has made progress in both the House and Senate. The House approved H.R. 1074, in June. The Senate Governmental Affairs Committee postponed its planned August markup of S. 59 due to numerous concerns raised by Senators regarding the burden on agencies of performing such analyses. The **Truth in Regulating Act**, S. 1244, establishing a three year pilot program requiring GAO to report on economically significant rules, was also postponed until consensus could be reached. The House does not have a companion bill to S. 1244.

J. TRITIUM PRODUCTION

The House version of H.R. 1401, the Department of Defense Authorization bill, included a provision that would direct the Secretary of Energy to designate particle accelerator technology as the primary technology for the production of tritium if NRC is not able to grant TVA license amendments to Watts Bar and Sequoyah nuclear facilities to produce tritium by December 31, 2002. The Senate bill, S. 1059, explicitly provided that DOE shall produce new tritium at the TVA Watts Bar or Sequoyah nuclear plants. It also directed the Secretary of Energy to complete preliminary design and engineering development of the particle accelerator technology to be used for backup tritium production. During conference, the Senate provision was agreed to, but Congress recessed before the conference bill was passed.

K. URANIUM MILL TAILINGS

Uranium Mill Tailings Radiation Control Act (UMTRCA)

UMTRCA Representatives Barbara Cubin (R-WY) and Steve Largent (R-OK) introduced H.R. 2641, "To make technical corrections to Title X of the Energy Policy Act of 1992," for cleanup of radioactive contamination from the operation of uranium and thorium milling operations. The bill would extend authority for Title X cleanups from 2002 to 2007 and increase the reimbursement from \$6.25 per ton to \$10.00 per ton. This is similar to legislation that was considered but not acted upon in the last Congress. H.R. 2641 has been referred to the Commerce Committee and it is unlikely to move in this session of Congress.

Atlas-Moab

Rep. George Miller (D-CA) circulated a "Dear Colleague" letter asking for cosponsors for a draft bill to transfer responsibility for cleanup and removal of the Atlas-Moab uranium mill tailings to the Department of Energy. Rep. Miller and others subsequently introduced H.R. 393 to accomplish this action. Rep. Chris Cannon (R-UT), who represents the Moab area, also

introduced legislation, H.R. 1559, to have the Secretary of Energy clean up and remove the Atlas-Moab mill tailings to an alternate site. Both bills were referred to the Commerce Committee. No action is anticipated.

Representatives Cannon and Grace Napolitano (D-CA) held a Resources Committee "briefing" on the two bills at which NRC, DOE, EPA, Grand Canyon Trust and the watchdog group POGO presented information pertaining to the Atlas-Moab tailings pile. The Committee has indicated additional briefings may be held.

L. Y2K PROBLEM

The NRC completed its internal Y2K work in February, ahead of the OMB deadline. In June, Chairman Horn of the House Government Reform Committee's Subcommittee on Government Management, Information, and Technology issued his 8th report card on agencies' internal efforts; the NRC received an A. Overall, the federal government received a B-.

On September 10, Chairman Horn issued his 9th report card on federal agencies' internal Y2K efforts. Once again, the NRC received an A and the overall federal government-wide grade was a B-. The Congressman gave the NRC credit in all areas of effort. In his press release, he commended the Social Security Administration, NRC, and FEMA, and their managers, for a job well done.

Since the beginning of the 106th, NRC provided testimonies on the status of agency and industry Y2K programs and activities. In February 1999, EDO William Travers testified before the Senate Environment and Public Works Committee's Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety on the NRC's internal and external Y2K efforts. In August, the agency submitted testimony to the Senate Special Committee on the Year 2000 Technology Problem regarding "Year 2000 Readiness of the Electric Power and Gas Industries." This was a "cyber hearing" where testimony was posted on the Internet but a hearing did not actually take place.

S. 1186 - Report No. 106-58

THIS SEARCH	THIS DOCUMENT	GOTO
Next Doc	Forward	New Search
Prev Doc	Back	Home Page
Doc List	Highlight Search Words	Help
	Doc Contents	

ENERGY AND WATER DEVELOPMENT APPROPRIATION BILL, 2000 FILED UNDER AUTHORITY OF THE ORDER OF THE SENATE OF MAY 27, 1999

*** NUCLEAR REGULATORY COMMISSION**

SALARIES AND EXPENSES

GROSS APPROPRIATION

Appropriations, 1999	\$465,000,000
Budget estimate, 2000	465,400,000
Committee recommendation	465,400,000

REVENUES

Appropriations, 1999	-\$444,800,000
Budget estimate, 2000	-442,400,000
Committee recommendation	-442,400,000

NET APPROPRIATION

Appropriations, 1999	\$20,200,00
Budget estimate, 2000	23,000,000
Committee recommendation	23,000,000

In the report accompanying the Fiscal Year 1999 Energy and Water Development Act, the Committee was critical of the Nuclear Regulatory Commission, listed a series of specific concerns regarding the Commission, and directed the Commission to report monthly to the Committee on the status of the Commission's licensing and regulatory duties.

The Commission as a whole, the five Commissioners individually, and the Commission staff deserve a great deal of credit for the Commission's accomplishments in the last year.

There are certainly areas that continue to need attention. However, it is the Committee's view that the Commission is actively identifying and considering those issues and taking steps to address them including the recent submission to Congress of a number of legislative proposals. The Committee strongly endorses that effort and will work with the appropriate authorizing Committees in that regard.

The Commission's monthly reports to the Committee have been informative and useful in tracking progress

at the Commission, and the Commission should continue to provide them.

The Committee recommendation includes \$465,400,000, the same amount as the request, for the Commission and includes a single year extension of the NRC's user fee collection authority. The Omnibus Budget and Reconciliation Act of 1990, as amended, requires that the Commission recover 100 percent of its budget authority, less the appropriation from the nuclear waste fund, by assessing licenses and annual fees. That authority expires in 1999, and unless additional fee collection authority is enacted prior to or concurrent to enactment of this Act, the Commission's authority to collect user fees would be limited to 33 percent of its budget. The Committee is aware that the Environment and Public Works Committee may soon consider legislation in this regard and intends that the 1-year extension included in this measure serve as a safeguard should that legislation not be enacted by October 1, 1999.

OFFICE OF INSPECTOR GENERAL

GROSS APPROPRIATION

Appropriations, 1999	\$4,800,000
Budget estimate, 2000	6,000,000
Committee recommendation	5,000,000

REVENUES

Appropriations, 1999	-\$4,800,000
Budget estimate, 2000	-6,000,000
Committee recommendation	-5,000,000

This appropriation provides for the Office of Inspector General of the Nuclear Regulatory Commission. The Committee recommends an appropriation of \$5,000,000 for fiscal year 2000.

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Appropriations, 1999	\$2,600,000
Budget estimate, 2000	3,150,000
Committee recommendation	3,150,000

The Committee recommends an appropriation of \$3,150,000 for the Nuclear Waste Technical Review Board. The Nuclear Waste Policy Amendments Act of 1987 directed the Board to evaluate the technical and scientific validity of the activities of the Department of Energy's nuclear waste disposal program. The Board must report its findings not less than two times a year to the Congress and the Secretary of Energy.

TENNESSEE VALLEY AUTHORITY

Appropriations, 1999
Budget estimate, 2000	\$7,000,000
Committee recommendation	7,000,000

The Committee recommends an appropriation of \$7,000,000 for the Tennessee Valley Authority, the same as the budget request. The funding is provided for the operation and maintenance of the Land Between the Lakes recreation area.

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>GOTO</i>
<u>Next Doc</u>	<u>Forward</u>	<u>New Search</u>
<u>Prev Doc</u>	<u>Back</u>	<u>Home Page</u>
<u>Doc List</u>	<u>Highlight Search Words</u>	<u>Help</u>
	<u>Doc Contents</u>	

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>GOTO</i>
Next Doc	Forward	New Search
Prev Doc	Back	Home Page
Doc List	Highlight Search Words	Help
	Doc Contents	

ENERGY AND WATER DEVELOPMENT APPROPRIATION BILL, 2000 FILED UNDER AUTHORITY OF THE ORDER OF THE SENATE OF MAY 27, 1999

* EXTERNAL REGULATION

In previous years, the Committee directed a review of the benefits of external regulation of the Department's facilities and funded pilot programs to explore such arrangements in detail. The Committee has determined that the Department's unique responsibilities and facilities too rarely have non-federal analogs with existing, appropriate regulatory schemes. As a result, the Committee no longer contemplates external regulation of the Department's facilities.

INAPPROPRIATE USE OF APPROPRIATIONS

In the previous Energy and Water Development Act, the Committee was critical of the use of appropriations to: pay for members of industry associations and associated entities to attend national and international conferences, publish magazines, purchase association membership information, conduct surveys of association membership, place op-ed style articles in publications, write talking points in support of the Department's programs, and underwrite industry conferences.

The Department has significantly improved its practices in these areas by selecting its outreach and information dissemination contractors through competitive processes. While competition may improve the quality of the products and services procured through these contracts, the Committee continues to insist that, as a general rule, appropriated funds should not be used, directly or indirectly, to underwrite the expenses of industry associations or associated entities.

Certain Department of Energy contractors are being reimbursed for exorbitant travel expenses. In fiscal year 1998, Department of Energy contractors incurred \$249,000,000 in travel costs for which they sought reimbursement. Sandia National Laboratories alone reported taking over 4,500 trips to Washington, DC, in fiscal year 1998 or the equivalent of 87 trips each week. Those sort of practices are absolutely unacceptable. The Committee has included in its recommendation both a statutory cap on the total amount of funds available for contractor travel costs and required that each contractor's travel costs in fiscal year 2000 be limited to not more than 80 percent of the amount incurred in fiscal year 1998. The Committee considers this a measured response and will take substantially more forceful action in the future if this situation is not remedied.

ENERGY SUPPLY PROGRAMS

Appropriations, 1999	\$727,091,000
Budget estimate, 2000	836,067,000
Committee recommendation	715,412,000

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>GOTO</i>
<u>Next Doc</u>	<u>Forward</u>	<u>New Search</u>
<u>Prev Doc</u>	<u>Back</u>	<u>Home Page</u>
<u>Doc List</u>	<u>Highlight Search Words</u>	<u>Help</u>
	<u>Doc Contents</u>	

ENERGY AND WATER DEVELOPMENT APPROPRIATION BILL, 2000 FILED UNDER AUTHORITY OF THE ORDER OF THE SENATE OF MAY 27, 1999

*** FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM**

Appropriations, 1999	\$140,000,000
Budget estimate, 2000	150,000,000
Committee recommendation	150,000,000

The Committee recommends an appropriation of \$150,000,000 to continue activities related to the Formerly Utilized Sites Remedial Action Program [FUSRAP] in fiscal year 1999. This is the same as the amount requested.

The responsibility for the cleanup of contaminated sites under the Formerly Utilized Sites Remedial Action Program [FUSRAP] was transferred to the Army Corps of Engineers in the Fiscal Year 1998 Energy and Water Development Appropriations Act, Public Law 105-62. The Committee is pleased that the Department of Energy and the Corps of Engineers have finally entered into an agreement on the functions of the program assumed by the Corps. This should help eliminate any uncertainties as the program moves forward.

* { The FUSRAP Program is not specifically defined by statute. The program was established in 1974 under the broad authority of the Atomic Energy Act and, until fiscal year 1998, funds for the cleanup of contaminated sites have been appropriated to the Department of Energy through existing appropriation accounts. In appropriating FUSRAP funds to the Corps of Engineers, the Committee intended to transfer only the responsibility for administration and execution of cleanup activities at eligible sites where remediation had not been completed. It did not intend to transfer ownership of and accountability for real property interests that remain with the Department of Energy.

The Corps of Engineers has extensive experience in the cleanup of hazardous, toxic, and radioactive wastes through its work for the Department of Defense and other Federal agencies. The Committee always intended for the Corps expertise be used in the same manner for the cleanup of contaminated sites under FUSRAP. The Committee expects the Corps to continue programming and budgeting for FUSRAP as part of the civil works program.

GENERAL EXPENSES

Appropriations, 1999	\$148,000,000
Budget estimate, 2000	148,000,000
Committee recommendation	151,000,000

House Report 106-253

The Defense Nuclear Facilities Safety Board was created by the Fiscal Year 1989 National Defense Authorization Act. The Board, composed of five members appointed by the President, provides advice and recommendations to the Secretary of Energy regarding public health and safety issues at the Department's defense nuclear facilities. The Board is responsible for reviewing and evaluating the content and implementation of the standards relating to the design, construction, operation and decommissioning of defense nuclear facilities of the Department of Energy.

Consistent with agency reductions that the Committee has made throughout this bill, the Committee recommendation is \$16,500,000, a decrease of \$1,000,000 from the budget request of \$17,500,000. The Committee urges the Board to focus on those defense nuclear production facilities that are operational and represent the highest radiological risk to workers and the public.

DENALI COMMISSION

Appropriation, 1999	\$20,000,000
Budget Estimate, 2000	
Recommended, 2000	
Comparison:	
Appropriation, 1999	-20,000,000
Budget Estimate, 2000	

The bill includes language rescinding \$18,000,000 appropriated in Public Law 105-245 for the Denali Commission.

NUCLEAR REGULATORY COMMISSION

GROSS APPROPRIATION

Appropriation, 1999	\$465,000,000
Budget Estimate, 2000	465,400,000
Recommended, 2000	455,400,000
Comparison:	
Appropriation, 1999	-9,600,000
Budget Estimate, 2000	-10,000,000

REVENUES

Appropriation, 1999	\$-444,800,000
Budget Estimate, 2000	-442,400,000
Recommended, 2000	-432,400,000
Comparison:	
Appropriation, 1999	+12,400,000
Budget Estimate, 2000	+10,000,000

NET APPROPRIATION

Appropriation, 1999	\$20,200,000
Budget Estimate, 2000	23,000,000
Recommended, 2000	23,000,000
Comparison:	
Appropriation, 1999	+2,800,000
Budget Estimate, 2000	

The Committee recommendation is \$455,400,000, a reduction of \$9,600,000 from the current fiscal year and \$10,000,000 from the budget request. The recommendation includes \$23,000,000 to be made available from the Nuclear Waste Fund and the General Fund, including \$19,150,000 to support the Department of Energy's efforts to characterize Yucca Mountain as a potential site for a permanent nuclear waste repository. The recommendation also includes

\$1,200,000, the same amount as the budget request, for the Commission's continuing efforts to study and provide technical assistance relating to external regulation of certain Department of Energy facilities, \$2,050,000 for work related to the Hanford Tank Waste Remediation System and \$600,000 for assistance to the Agency for International Development for nuclear safety related work in the Former Soviet Union and Eastern European countries.

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the Nuclear Regulatory Commission recover 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, by assessing license and annual fees. This authority expires at the end of the current fiscal year. The Committee has included a statutory provision providing for a one-year extension of this authorization. The extension of this authority is necessary to provide the resources needed to fund the activities of the Commission.

The Committee notes that the Commission has responded positively to a number of issues that the Congress has raised over the last few years with respect to moving toward a more efficient and effective regulatory system. The Commission as a whole, the five Commissioners individually, and the Commission staff deserve a great deal of credit for the accomplishments in the last year.

The Committee observes that much work remains to be done before the benefits of these reform initiatives are realized. The Committee expects that these changes, when implemented, will result in lower budget requirements and has therefore recommended a lower amount for fiscal year 2000 than requested by the Commission. Moreover, the Committee believes that for these changes to occur, the Commission must be able to decide what organizational structure will best enable it to meet its responsibilities. The Nuclear Regulatory Commission, as successor to the Atomic Energy Commission, was established as an independent agency by the Atomic Energy Act of 1954, as amended. In subsequent legislation, the Commission was statutorily required to establish certain offices and functions. The Committee believes the Commission is in the best position to determine what organizational structure will best enable it to fulfill its statutory mandate to assure adequate protection of public health and safety and the common defense and security associated with the use of nuclear materials. Therefore, the Committee urges the Commission to consider submitting legislation to repeal those provisions of law. ✓

The Committee believes that one of the most important challenges facing the Commission is the renewal of licenses for currently operating reactors. The Committee is pleased that the Commission has taken steps to put a two-year review process for license renewal applications in place. The Committee directs the Commission to provide a report that describes the lessons learned from the initial license renewal reviews and the actions being taken to ensure that the two-year timetable will be sustained and improved upon for future license renewal applicants. ✓

The Committee supports the move to safety-focused, performance-based regulation. The Committee is aware that the Commission has recently directed the Commission staff to begin to revise the regulations to change the scope and technical requirements based on safety insights and operating experience. The Committee notes, however, that no timetable was given for completing this effort. The Committee directs the Commission to examine reforms to the scope of power reactor regulations that will promote a higher level of confidence that the revised regulations, when issued, are consistent with the fundamental accountability of the Commission and that

regulations which do not contribute to adequate protection are eliminated. The Committee directs that these efforts be completed no later than December 31, 2000. ✓

In addition, the Committee directs the Commission to review existing regulations to reform those that are outdated or paperwork oriented to a set of regulations that are performance-based. This effort should also be completed by 2004. ✓

The Committee directs the Commission to continue to provide monthly reports on the status of its licensing and regulatory duties. The Committee notes that in addition to the power reactors regulations contained on 10 CFR 50, other parts affecting power reactor operation are in need of reform. The Commission should include in the monthly report to Congress its activity with respect to these other parts, particularly its efforts to harmonize its security regulations with part 50. ✓

The Committee recommendation includes authority for the Commission to collect annual charges not to exceed a total of \$432,400,000 from licensees in fiscal year 2000. The Committee recommendation includes an appropriation of \$19,150,000 to be made available to the Nuclear Waste Fund and another \$4,000,000 to be made available from the General Fund for other Federal agency activities. Due to severe budget constraints, the Committee was unable to provide the approximately \$50,000,000 for Agreement State oversight, international activities, generic decommissioning and reclamation activities, the site decommissioning management program, regulatory support to Agreement States, the small entities program, and support to nonprofit educational institutions. The Committee urges the Commission and the Administration to provide statutory language and budget resources needed to remove these expenditures from the fee base currently imposed on licensees.

The Committee has recommended a \$12,400,000 reduction for fiscal year 2000 to the regulatory and non-Federal programs. Consistent with the new regulatory practices and procedures, the Committee expects reductions in future budget requests and is committed to ensuring that out-year budget requirements will be reduced. The Commission is directed to include a comprehensive five-year plan as part of its fiscal year 2001 budget request. The five-year plan must provide a detailed staffing and organizational analysis and corresponding budget requirements for fiscal years 2001 through 2005.

OFFICE OF INSPECTOR GENERAL

GROSS APPROPRIATION

Appropriation, 1999	\$4,800,000
Budget Estimate, 2000	6,000,000
Recommended, 2000	6,000,000
Comparison:	
Appropriation, 1999	+1,200,000
Budget Estimate, 2000	

REVENUES

Appropriation, 1999	\$-4,800,000
Budget Estimate, 2000	-6,000,000
Recommended, 2000	-6,000,000
Comparison:	
Appropriation, 1999	-1,200,000
Budget Estimate, 2000	

Extension of Authority for Nuclear Regulatory Commission to Collect Fees and Charges.--Section 504 provides a one-year extension of the authority of the Nuclear Regulatory Commission to collect fees and charges to offset appropriated funds.



Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and State of South Dakota Terrestrial Wildlife Habitat Restoration.--Section 505 repeals the Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and State of South Dakota Terrestrial Wildlife Habitat Restoration Act.

Denali Commission.--Section 506 repeals legislation authorizing the Denali Commission and amendments thereto.

Technical Change.--Section 507 makes a technical change to the provision of the Water Resources Development Act of 1996 authorizing reimbursement for work by non-Federal interests on certain civil works projects of the Corps of Engineers.

Prohibition on Implementation of Kyoto Protocol.--Section 508 prohibits the use of funds to propose or issue rules, regulations, decrees or orders for implementing the Kyoto Protocol prior to Senate ratification.

HOUSE OF REPRESENTATIVES REPORT REQUIREMENTS

The following items are included in accordance with various requirements of the Rules of the House of Representatives.

CONSTITUTIONAL AUTHORITY

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives states that: "Each report of a committee on a public bill or public joint resolution shall contain the following: (1) A statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution."

The Committee on Appropriations bases its authority to report this legislation from Clause 7 of Section 9 of Article I of the Constitution of the United States of America which states: "No money shall be drawn from the Treasury but in consequence of Appropriations made by law * * *"

Appropriations contained in this Act are made pursuant to this specific power granted by the Constitution.

COMPARISON WITH BUDGET RESOLUTION

Clause 3(c)2 of rule XIII of the Rules of the House of Representatives requires an explanation of compliance with section 308(a)(1)(A) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344), as amended, which requires that the report accompanying a bill providing new budget authority contain a statement detailing how that authority compares with the reports submitted under section 302 of the Act for the most recently agreed to concurrent resolution on the budget for the fiscal year from the Committee's section 302(a) allocation. This information follows:

[In millions of dollars]

302(b) Allocation	This bill
Budget	Budget

portion of the floodplain. Under the proposal by the State of Utah for the Legacy Nature Preserve, approximately 1600 acres would be held in trust by the State, providing an ecological buffer and producing a unique project that not only solves a serious transportation problem but provides net benefits to the aquatic ecosystem. The Committee urges the Corps of Engineers to approve a permit for alignment C.

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM ✓

Appropriation, 1999	\$140,000,000
Budget Estimate, 2000	150,000,000
Recommended, 2000	150,000,000
Comparison:	
Appropriation, 1999	10,000,000
Budget Estimate, 2000	

The Committee recommendation for the Formerly Utilized Sites Remedial Action Program (FUSRAP) is \$150,000,000, the same as the budget request. In fiscal year 1998, Congress transferred responsibility for cleanup of contaminated sites under FUSRAP to the U.S. Army Corps of Engineers. In appropriating FUSRAP funds to the Corps of Engineers, the Committee intended to transfer only the responsibility for administration and execution of cleanup activities at eligible sites where remediation had not been completed. It did not intend to transfer ownership of and accountability for real property interests that remain with the Department of Energy. The Committee expects the Department to continue to provide the institutional knowledge and expertise needed to best serve the nation and the affected communities in executing this program.

The Corps of Engineers has extensive experience in the cleanup of hazardous, toxic, and radioactive wastes through its work for the Department of Defense and other Federal agencies. The Committee intends for the Corps expertise be used in the same manner for the cleanup of contaminated sites under FUSRAP, and expects the Corps to continue programming and budgeting for FUSRAP as part of the civil works program.

In the Energy and Water Development Appropriations Act for FY 1999, Public Law 105-245, Congress directed that the response actions by the Corps of Engineers under FUSRAP shall be subject to the administrative, procedural, and regulatory provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan. In appropriating funds to the Corps of Engineers for the cleanup of contaminated sites under FUSRAP, the Committee does not intend that licensing of the Corps by the U.S. Nuclear Regulatory Commission shall be required for the implementation by the Corps of the responsibility for cleanup of contaminated sites under FUSRAP. ✓

GENERAL EXPENSES

Appropriation, 1999	\$148,000,000
Budget Estimate, 2000	148,000,000
Recommended, 2000	148,000,000
Comparison:	
Appropriation, 1999	
Budget Estimate, 2000	

This appropriation finances the expenses of the Office of the Chief of Engineers, the Division Offices, and certain research and statistical functions of the Corps of Engineers.