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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

January 3, 1992

MEMORANDUM FOR:

The Chairman  
Commissioner Rogers  
Commissioner Curtiss  
Commissioner Remick  
Commissioner de Planque

FROM:

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

SUBJECT:

STATUS OF ISSUES IN THE 102ND CONGRESS

Attached for your information and use is the status of issues relevant to the NRC and being monitored by the Office of Congressional Affairs.

Attachment:  
As Stated

cc: OGC  
SECY  
EDO  
PA  
IG  
OCAA  
IP  
ACNW  
ACRS  
ASLBP  
LSSA

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INDEX

STATUS OF ISSUES  
IN THE 102ND CONGRESS

Page Number

I. NRC BUDGET

- A. NRC Appropriations/Authorization ..... 1
- B. Omnibus Budget Reconciliation Act ..... 1

II. NRC - NOMINATION OF DR. E. GAIL DE PLANQUE ..... 2

III. NRC-RELATED ISSUES AND LEGISLATION

- A. Advanced Reactors ..... 2
- B. Emergency Planning ..... 2
- C. Export/Import Hazardous Waste ..... 3
- D. High-Level Waste ..... 3
- E. International ..... 4
- F. License Reform/National Energy Strategy ..... 4
- G. License Renewal ..... 5
- H. Low-Level Waste ..... 6
- I. Low-Level Waste (Below Regulatory Concern) .... 6
- J. Millstone ..... 7
- K. Nonproliferation/Export Issues ..... 7
- L. NRC Legislative Proposals ..... 8
- M. Uranium Revitalization, Tails Reclamation,  
and Enrichment ..... 9
- N. Yankee Rowe ..... 10

IV. GOVERNMENT-WIDE LEGISLATION

- A. Ban on Receipt of Honoraria by Federal  
Employees ..... 10
- B. Council on Environmental Quality (CEQ)  
Reauthorization ..... 11
- C. Department of the Environment ..... 12
- D. Family and Medical Leave Act ..... 12
- E. Federal Advisory Committee Act (FACA)  
Amendments ..... 13
- F. Federal Facilities Compliance ..... 13
- G. Fitness for Duty ..... 14
- H. Government Energy Efficiency Act ..... 14
- I. Hatch Act ..... 15
- J. Paperwork Reduction Act ..... 15
- K. Procurement Integrity ..... 15

L.	Resource Conservation and Recovery Act (RCRA)..	16
M.	Senior Executive Service Improvements Act .....	16
N.	Waste Isolation Pilot Plant (WIPP) .....	16

## I. NRC BUDGET

### A. NRC Appropriations/Authorization

1. Appropriations -- H.R. 2427 was adopted by the House and Senate and signed into law by the President on August 17, 1991, as P.L. 102-104. The total NRC request of \$512.8 million was approved. Both the House and Senate Conference Report language was included in the Conference Report (H. Report 102-177). (See Attachment for House and Senate Report language.)

2. Authorization -- The NRC authorization bill for Fiscal Years 1992 and 1993 was submitted to Congress in February 1991. To date the bill has not been introduced in the House or Senate. A new authorization bill will need to be submitted with the OMB-approved budget number for FY 1993.

The Senate Environment and Public Works Committee's Nuclear Regulation Subcommittee is planning to hold an authorization hearing early 1992. The House Interior and Insular Affairs Committee's Subcommittee on Energy and the Environment intends to hold a budget/authorization hearing in February 1992. The House Appropriations Committee's Energy and Water Development Subcommittee has scheduled a March 12, 1992, hearing on the FY 1993 budget.

### B. Omnibus Budget Reconciliation Act (P.L. 100-508)

The Act requires that the Nuclear Regulatory Commission recover 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years 1991 through 1995 by assessing license and annual fees. The proposed rule was issued for comment in April 1991. The final rule was published on July 10, 1991, after evaluating approximately 400 comments.

Senate Environment and Public Works, Energy and Natural Resources and Small Business Committees and House Interior and Insular Affairs and Energy and Commerce Committees were briefed on proposed and final rules. NRC has received over 110 letters of concern from Senators and Representatives.

Legislation to amend P.L. 100-508 would require a sixty percent majority. While that is very difficult to do, there is keen interest from the Congress on user fee issues.

## II. NRC - NOMINATION OF DR. E. GAIL DE PLANQUE

In June, the President nominated Dr. E. Gail de Planque, Director of DOE's Environmental Measurements Laboratory, to be a member of the Commission to succeed Thomas Roberts. Dr. de Planque's confirmation hearing was held by the Senate Environment and Public Works Committee on October 30, and the Senate confirmed her nomination on November 23. She was sworn in as a Commissioner on December 16, 1991, to a term which expires on June 30, 1995.

## III. NRC-RELATED ISSUES AND LEGISLATION

### A. Advanced Reactors

Interest in this issue has focused, and will continue to focus, on two areas:

- the level of detail the Commission requires for a certified design under Part 52, and

- the schedules for the completion of NRC activities resulting in design certifications for each reactor type.

DOE and the vendors continue to lobby both Houses about their concern that the NRC requires a level of detail beyond what they think Part 52 requires and what they are, due largely to financial considerations, interested in producing. (Utilities are not ardent partners in this particular effort since they would want as much detail worked in at vendor expense as possible.) There is also a persistent effort by the industry to single out NRC as the reason for slippages in the design certification schedules.

Expect that these areas will come up again in 1992 via the NRC Appropriations Committees and the DOE authorization process concerning the civilian reactor program. This issue is also likely come up in Congressional correspondence.

### B. Emergency Planning

Representative Studds (D-MA) introduced H.R. 2190 on May 1, 1991, a bill that prohibits the operation of a nuclear power plant if the Federal Emergency Management Agency (FEMA) determines that

any State, local, or utility plan for offsite emergency preparedness is inadequate. The bill was referred to the Committee on Interior and Insular Affairs. No hearings or other activities have been scheduled.

#### C. Export/Import Hazardous Waste

The Hazardous and Additional Waste Export and Import Act, S. 1082 and H.R. 2398, is intended to implement the Basel Convention, which would prohibit export and import of all waste covered by the Convention until the U.S. has entered into a bilateral agreement with the receiving or sending country. The agreements would have to provide for environmentally sound management of the wastes.

The bills provide specific exclusions for source, special, and byproduct material, spent nuclear fuel, and mixed wastes. Exports and imports of these materials would not be covered by the legislation. The administration is considering submitting revised language which would make exports and imports of mixed waste subject to the legislation. NRC has said that it does not oppose that approach, but suggests that the legislative history make it clear that the legislation would not in any way derogate from NRC's jurisdiction over the radioactive component of mixed waste nor affect the relationship of NRC and EPA in this area.

Both bills were introduced at the request of the Administration. In the Senate, the Environment and Public Works Committee's Subcommittee on Environmental Protection (Baucus D-MT) held a hearing on July 25, 1991. The Environmental Committee plans to include S. 1082 as an amendment to RCRA reauthorization. In the House, the bill has been referred to the Foreign Affairs and Energy and Commerce Committees. The Energy Committee's Subcommittee on Transportation and Hazardous Materials held a hearing on October 10, 1991, but has scheduled no further action.

A number of other bills have been introduced that are aimed at curbing the export and import of wastes but none seem to have enough support for passage. It is more likely that the sponsors of these bills will use them or parts of them as amendments to other bills.

#### D. High-Level Waste

The continued perception in Congress is that the State of Nevada, through its environmental permitting authority, is keeping DOE from characterizing the Yucca Mountain site. Senator J. Bennett Johnston (D-LA) introduced legislation that would take away Nevada's permitting authority. The Energy Committee reported the bill, S. 1138, to the Senate.

In the House, the Energy and Commerce Committee's Subcommittee on Energy and Power passed an amendment to its national energy strategy bill, H.R. 776, that is similar to the language in the Johnston bill. The difference is that S. 1138 decouples the construction of a Monitored Retrievable Storage facility (MRS) from the construction of a high-level waste repository while the House bill maintains the linkage and adds that the MRS should be located as near to the repository as possible. The Energy and Commerce Committee expects to begin markup at the beginning of the next session. The Interior and Insular Affairs Committee also has jurisdiction and has scheduled a hearing for January 10, 1992.

#### E. International

Senator Bob Graham's (D-FL) interest in international nuclear safety has increased because of allegations from two Cuban defectors that there are significant deficiencies in the materials and construction practices at the reactor being built in Cuba. Senator Graham held hearings in July and November on international civilian nuclear reactor safety and international standards for nuclear reactors. Senator Graham will continue to follow this issue in the next session of Congress but it is uncertain whether he will hold any additional hearings. He has recently asked the General Accounting Office to do a report on the best avenues to take to improve international civilian nuclear reactor safety either in the form of international standards or bilateral agreements.

#### F. Licensing Reform/National Energy Strategy

In his State of the Union address, President Bush signalled the high priority he placed on national energy strategy (NES) legislation; subsequently, the Administration presented its proposal, embodied in S. 570 and H.R. 1301. Throughout the year, there were six hearings on the NES nuclear titles at which NRC personnel testified; another is planned in January.

Senators Johnston (D-LA) and Wallop (R-WY) introduced their own bill (S. 341, reported as S. 1220). After numerous hearings throughout the Spring, the Energy and Natural Resources Committee reported out S. 1220 in June. Opposition to S. 1220 increased, largely due to its titles regarding opening ANWR for oil exploration and changing the fuel economy (CAFE) standards for automobiles. In November, this opposition resulted in a filibuster of the motion to bring S. 1220 to the Floor. A motion to invoke cloture to end the filibuster failed by 10 votes; thus, S. 1220 was not considered. A new version of S. 1220, minus the ANWR and CAFE titles, is expected to be one of the first items considered in the new year. Without those two titles, however,

the nuclear licensing reform title has now become the most controversial part of the bill. The NRC has stated its support for S. 1220 as currently drafted.

In the House, many Committees have jurisdiction over the NES legislation. The Energy and Commerce Committee's Subcommittee on Energy and Power held a number of hearings throughout the Spring on the Administration's bill. In October, the Subcommittee approved for full Committee consideration H.R. 776, comprehensive energy legislation which includes titles on nuclear waste and uranium enrichment, but not nuclear licensing reform. The full Committee may wait until the Senate acts before taking up H.R. 776.

The House Interior Committee's Subcommittee on Energy and the Environment (Kostmayer) held a hearing on licensing reform in July. Rep. Kostmayer (D-PA) introduced H.R. 3629 in September which deals exclusively with licensing reform and license renewal. Hearings on the license renewal title were held in November; no further hearings on the bill are planned.

#### G. License Renewal

Representative Peter Kostmayer (D-PA) introduced H.R. 3629 which would, among other items, expand the scope of a license renewal hearing beyond that contemplated in the final rule approved by the Commission. Rep. Kostmayer held hearings on this topic on November 5 and 7, 1991. No further action is scheduled in the Interior Committee at this time.

The GAO issued a report, "Research Efforts Under Way to Support Nuclear Power Plant License Renewal", in response to a request from Rep. Howard Wolpe (D-MI), Chairman of the Subcommittee on Investigations and Oversight, House Committee on Science, Space, and Technology. Rep. Wolpe canceled a hearing with the NRC staff on this topic; however, his staff indicates that a hearing is still possible. The Subcommittee staff has not yet developed a theme or focus for a potential hearing.

This will remain an active issue since many groups, notably the Union of Concerned Scientists, believe our final rule should have required the compilation of the Current Licensing Basis (CLB), required applicants' plants to meet current "new plant" licensing standards, and expanded the scope of any renewal hearings. Questions in this area can be expected during the budget/authorization hearings.

#### H. Low-Level Waste

A number of bills have been introduced reflecting parochial interests designed to thwart State/Compact siting decisions. Chief among these is a bill offered by Representative Sam Gejdenson (D-CT). His proposal, H.R. 3491, would not allow the siting of a low-level waste (LLW) facility within 3.5 miles of a school and would make disposal of Class C LLW a Federal responsibility. This was to be offered as an amendment to Representative George Miller's (D-CA) BRC bill but was not offered after an agreement was made to hold a separate hearing solely on LLW issues. The Kostmayer Subcommittee has not as yet scheduled such a hearing but plans to hold one in the next session.

Other bills that appear to have little chance of being enacted into law include:

H.R. 1012 by Representative Bill Paxon (R-NY) which would prohibit the disposal of LLW at a site where Federal funds have been expended to decontaminate a facility used to store HLW (West Valley); and

S. 130, 131, and 132 all by Senator Larry Pressler (R-SD) which, respectively, would prohibit siting a LLW facility within 50 miles of another state without that State's approval, allow a Host State to contract with another Compact for LLW disposal; and require a Compact to use routes only within the Compact to transport LLW.

#### I. Low-Level Waste (Below Regulatory Concern)

Representative George Miller's anti-BRC bill, H.R. 645, would revoke NRC's 1990 policy statement and allow States to regulate any future materials NRC declares to be BRC. His Interior and Insular Affairs Committee marked up the bill on October 2 at which time an amendment was adopted which would revoke NRC's 1986 BRC Policy Statement as well as the 1990 statement. Subcommittee Chairman Peter Kostmayer (D-PA) added an amendment during the Subcommittee markup held on September 26 which would allow States to set their own radiation standards in any area where NRC promulgates a regulation they deem to be "ineffective." This would have the effect of ending Federal preemption of power reactor regulation. Throughout the Subcommittee and Committee markups, Chairman Miller took great care to discourage amendments which would reopen the Low-Level Radioactive Waste Amendments Act of 1985. It is generally believed that other committees with legislative jurisdiction over the LLW issue are reluctant to revisit the Act in this Congress.

The Senate Environment and Public Works Committee's Subcommittee on Nuclear Regulation has not as yet held a hearing on Senator George Mitchell's (D-ME) BRC bill, S. 2979. The Subcommittee staff has said that a hearing could be held early in the second session, probably in March. Senator Mitchell's bill would allow States to set more stringent standards not only for wastes NRC declares to be BRC, but also for all low-level radioactive wastes.

J. Millstone

Sen. Lieberman (D-CT) and Representative Gejdenson (D-CT) will expect us to keep their staffs informed of our ongoing followup on numerous allegations concerning operations at Millstone.

K. Nonproliferation/Export Issues

On January 31, 1991, Senator Riegle (D-MI) introduced S. 320, reauthorizing the Export Administration Act of 1979. Section 542 of the bill prevents NRC from issuing an export license for any source or special nuclear material, any production or utilization facility, any sensitive nuclear technology, any component, item, or substance determined to have significance for nuclear explosive purposes pursuant to section 109b of the Atomic Energy Act of 1954, or any other material or technology requiring such a license or authorization to Iraq. This bill passed the Senate on February 20 and was referred to the House Foreign Affairs and Judiciary Committees. On October 31, the House returned the bill to the Senate because it contained a revenue-raising measure, and bills of this type can only originate in the House of Representatives. The Senate is expected to amend this bill by deleting the revenue-raising measure and then pass it in the next session of Congress.

After learning of Iraq's nuclear capabilities, several bills have been introduced this Congress regarding non-proliferation. Representative Markey (D-MA) and Senator Wirth (D-CO) have introduced identical bills (S. 1601, H.R. 2755) that would prohibit the NRC from issuing a license for the export of high enriched uranium unless NRC has determined that the reactors involved cannot feasibly be converted to use low-enriched uranium. These bills have been referred to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs.

On October 8, Representative Schumer (D-NY) introduced H.R. 3527, amending the Atomic Energy Act so that export licenses of high enriched uranium can only be issued if low-enriched cannot be used, and if the proposed recipient agrees to change to low-enriched uranium when the reactor is able to use it.

Representative Gejdenson (D-CT) introduced H.R. 3489, reauthorizing the Export Administration Act which includes Title III, "Nuclear Proliferation Prevention Act of 1991." This title combines the two bills introduced by Representative Markey and Representative Schumer.

The nuclear provisions allow licensing of exports for high enriched uranium for use in nuclear research or test reactors only if (1) it was determined that there was no alternative low-enriched nuclear fuel available which could be used in the reactor; (2) the proposed recipient has provided assurances that, whenever an alternative fuel becomes available it will be used in the reactor; and (3) the U.S. government is actively developing alternative fuels to be used in the reactor. The bill also would establish additional restrictions on the export of components, dual-use nuclear-related items, and technology transfers.

The House passed the bill on October 30 and referred it to the Senate. The Senate did not act on this bill before it adjourned. The Administration has threatened to veto the bill if it is enacted in its present form, in part because of their dissatisfaction with the nonproliferation provisions. In 1992, the House and Senate will probably meet in Conference to iron out the differences of S. 320 and H.R. 3489.

#### L. NRC Legislative Proposals

On March 22, 1991, the Commission sent legislative proposals to the Congress. Specifically, the legislation would (1) help ensure that defects in components and regulatory violations will be reported to the NRC, (2) confirm the Commission's authority to impose civil monetary penalties, (3) modify a Congressional reporting requirement applicable to the NRC's Advisory Committee on Reactor Safeguards, (4) authorize guards at NRC licensed facilities to use firearms in certain circumstances, (5) make unauthorized introduction of weapons at certain NRC licensed facilities a Federal crime, (6) make sabotage of a production, utilization or waste storage facility during its construction a Federal crime if action jeopardizes public health and safety during construction, and (7) authorize the NRC to obtain administrative search warrants.

The legislative oversight committees were briefed in April on the legislation. As of December the proposals had not been introduced in the House or Senate. The Senate Environment and Public Works Committee plans to hold an authorization hearing in early 1992. At that time, Senator Graham will introduce the proposals and they will be discussed during the hearing.

M. Uranium Revitalization, Tails Reclamation, and Enrichment

The Senate has again passed a bill, S. 210, which includes transfer of DOE's enrichment program to a new government-owned corporation and provides \$300 million in Federal money for remediation of active uranium and thorium processing sites (Title II UMTRCA sites). It also provides \$30 million for the cleanup of the West Chicago site. Under the proposed legislation, NRC would license the Advanced Vapor Laser Isotope Separation process (AVLIS), as well as the two operating gaseous diffusion plants. The bill originated in the Senate Energy and Natural Resources Committee and is sponsored by Senators J. Bennett Johnston (D-LA) and Wendell Ford (D-KY). S. 210 is also a part of the Energy Committee's National Energy Strategy, S. 1120 (Title X). Senators Johnston, Ford and Pete Domenici (R-NM) plan to continue their pressure on their House of Representative colleagues to pass a bill and to pressure DOE to develop the AVLIS.

Representative Marilyn Lloyd's (D-TN) Energy Subcommittee in the House Science, Space, and Technology Committee (Brown D-CA) has in the past been the only House Committee active on and supportive of uranium enrichment privatization. This session, she introduced H.R. 788 which is similar to S. 210, and has held hearings on the bill as well as on the AVLIS program. Rep. Lloyd's staff collaborated with the staff of the House Energy and Power Subcommittee (Sharp D-IN), Committee on Energy and Commerce to produce a new compromise bill which is incorporated in H.R. 776.

The Sharp Subcommittee held a hearing on uranium enrichment privatization options earlier in the session and marked up a committee print on October 17 for inclusion in a national energy strategy bill. This proposal differs from the Senate-passed bill, S.210, and other House proposals by allowing the Corporation to lease the gaseous diffusion plants (GDP) from DOE, have exclusive rights to commercialization of the AVLIS technology, and receive a \$364 million loan. Later, the Corporation would be able to prepare a privatization plan. Of specific interest to NRC are the licensing and operations provisions of the bill. The GDPs leased by the Corporation would be regulated by DOE "in consultation with the NRC." A fund would be established within DOE to pay for the decommissioning and decontamination of the GDPs. Also, the House bill contains \$40 million for cleanup of the West Chicago site.

The third House Committee with jurisdiction, Interior and Insular Affairs' Subcommittee on Energy and the Environment (Kostmayer) held a hearing on October 29. The Kostmayer Subcommittee also plans to introduce a bill. It therefore appears that for the

first time the House may be willing to consider enrichment legislation.

With an eye toward the future, Senator Hank Brown (R-CO) introduced S. 1885 which would reauthorize the Uranium Mill Tailings Radiation Control Act (UMTRCA). The bill is designed to extend DOE authority for cleaning up Title I (inactive) sites through 1998. DOE's authority to cleanup such sites expires in 1994.

At the October 2, 1991 Interior Committee markup of Representative George Miller's BRC bill, Representative Wayne Owens (D-UT) offered an amendment which would have allowed a State Governor to prevent the storage or disposal of non-uranium mill tailings which originate outside the State at uranium mill tailings sites within the State. At the hearing, the amendment was deemed nongermane but Chairmen Miller and Kostmayer promised to address the subject at a future hearing. Toward that end, Representative Owens introduced H.R. 3631. He also introduced H.R. 3784 which broadens the language in H.R. 3631 by requiring a State to enact a consensual law prior to the approval of any conveyance of Federal lands sold, exchanged, leased or rights-of-way granted for constructing a radioactive or other waste storage, treatment, incineration or disposal facility. Representative Kostmayer plans to hold a field hearing with Representative Owens in Salt Lake City, Utah, on January 8, 1992, that will focus on H.R. 3631. NRC staff will testify.

#### N. Yankee Rowe

There continues to be interest in the Commission's activities concerning the embrittlement issue at Yankee Rowe. This will likely remain an issue of interest as the plant completes its material characteristics program and makes decisions on future operations.

### IV. GOVERNMENT-WIDE LEGISLATION

#### A. Ban on Receipt of Honoraria by Federal Employees

The Ethics in Government Act of 1989 banned the receipt of honoraria by Federal employees, including for activities unrelated to one's job. Widespread concern that this ban was too broad resulted in corrective bills being introduced and hearings being held throughout the year.

Just prior to recess in late November, the House approved by voice vote H.R. 3341, which would allow all career Federal

employees and noncareer employees at GS-15 and below the accept honoraria for activities unrelated to their jobs. Noncareer employees above GS-15 would have to notify their agency ethics office if they accept honoraria above \$200. Noncareer employees paid at or above Executive Schedule Level V (\$101,300) would continue to be prohibited from accepting honoraria under H.R. 3341.

In February, the Senate Governmental Affairs Committee approved its own bill, S. 242, which would exempt all career Federal employees from the honoraria ban, while maintaining it for noncareer employees above GS-15. A hold was placed on the bill until the Senate considered banning honoraria for itself; a senatorial ban was approved this summer. A Senator has placed a hold on the legislation because of concerns relating to provisions in the bill which would permit Congressional staff to receive honoraria.

#### B. Council on Environmental Quality (CEQ) Reauthorization

The House and Senate versions of this bill (H.R. 1271 and S. 1278) are identical to those introduced in the last session. Both include provisions which would (1) make clear that CEQ's regulations are binding on independent regulatory agencies; (2) require every Federal agency to review a statistically significant sample of their environmental impact statements to determine the extent to which recommended mitigation measures were implemented and the effectiveness of the implemented mitigation measures; and (3) extend the environmental impact statement provisions of NEPA section 102(2)(C) to Federal actions that take place outside of, or have significant environmental impacts outside, the jurisdiction of the U.S.

The Senate Environment and Public Works Committee's Subcommittee on Superfund, Ocean and Water Protection (Lautenberg, D-NJ) held a hearing on S. 1278 in July. The Committee marked up the bill and reported it to the Senate on October 8. It is our understanding that a hold has been placed on the bill and no floor action will be taken on the bill until the reasons for the hold have been resolved. The Administration has threatened to veto the legislation because of the international reach of NEPA provisions. In the House, the Merchant Marine and Fisheries Committee's Subcommittee on Fisheries and Wildlife Conservation and the Environment (Studds D-MA) held a hearing on March 14. No other action has been scheduled. Last year, the House passed the CEQ Authorization with the same provisions both as a free standing bill and as an amendment to the Department of the Environment bill. The Senate did not act on a similar bill.

### C. Department of the Environment

Last year, the elevation of the Environmental Protection Agency (EPA) to cabinet status was a Presidential priority and its passage was scheduled for Earth Day. Since the main Senate sponsor, Senator John Glenn (D-OH), made the bill a vehicle for more than just the simple elevation of EPA to cabinet status, it was opposed by the Administration as well as by the Senate Energy (Johnston, D-LA) and Armed Services (Nunn, D-GA) Committees. This year, with the last minute deletion of a number of provisions including the establishment of an independent bureau of statistics and the requirement that at least half of the Department's deputy assistant secretaries be selected from the career Senior Executive Service, Senator Glenn's S. 533 passed the Senate on September 30. The bill includes a provision which would establish a Presidential Commission to evaluate EPA management and organization and to make recommendations on the need to enhance the organization of the Department to eliminate duplication and overlap between programs. Dropped from the bill but included in the Governmental Affairs Committee report is language that states the Committee's intent for the Commission to study areas where EPA jurisdiction overlaps with another agency.

In the House, Representative Sherwood Boehlert (R-NY) has introduced H.R. 3121 which is a more streamlined bill in line with the Administration's objectives. H.R. 3121 requires the President to submit a report to Congress within five years which makes recommendations on whether or not additional environmental functions should be invested in the Department of the Environment. The bill has been referred to the Government Operations Committee. Representative Boehlert's attempt to have the full House take up the bill under unanimous consent without Committee action failed as the session came to a close.

### D. Family and Medical Leave Act

This fall, Congress approved S. 5, the Family and Medical Leave Act, which would provide up to 12 weeks of unpaid leave for the birth or adoption of a child or the serious illness of the employee, their child, spouse or parent. These provisions are applicable to Federal employees as well as to the private sector. Conferees need to resolve minor differences before S. 5 can be sent to the President; however, he successfully vetoed similar legislation last year, and there appears to be insufficient votes in the House to override a veto. It is expected that Congress will delay sending the legislation to the President until later in 1992 in order to make family and medical leave an election issue, thereby possibly garnering a signature.

E. Federal Advisory Committee Act (FACA) Amendments

Senator John Glenn (D-OH) introduced S. 2039, the Federal Advisory Committee Act Amendments, in November. The legislation is the product of years of hearings on FACA and aims to address concerns regarding the proliferation of committees, definition of "balanced membership", openness of meetings and availability of documents, and conflicts of interest. The Senate Governmental Affairs Committee is currently seeking agency comments on S. 2039 and plans to move it quickly; a similar bill has not been introduced in the House.

F. Federal Facilities Compliance

While the nation, prodded by the Federal government, embarks on a massive anti-pollution effort, some of the government's own facilities continue to be among the country's worst polluters. But until now Federal facilities have shielded themselves from fines and other sanctions by claiming Federal immunity -- a position tht has been upheld by some Federal courts. Congress this year made an effort to eliminate that defense and force Federal facilities to abide by the regulations of the 1976 Resource Conservation and Recovery Act (PL 94-508).

The House on June 24 passed H.R. 2194 by voice vote. The bill would give other Federal agencies and state governments the right to fine or penalize Federal facilities that violate provisions of the Resource Conservation and Recovery Act (RCRA). The Administration opposed the bill, saying it would lead to an avalanche of litigation, as well as unduly stringent regulations on Federal ships at sea and military bases. Al Swift (D-Wash.), Chairman of the Energy and Commerce Committee's Subcommittee on Transportation and Hazardous Materials, has promised to consider the Administration's concerns when the House takes up reauthorization of RCRA next year.

With a strong push from its sponsor, Senate Majority Leader George J. Mitchell (D-ME), the Senate on October 24 passed, 94-3, its version of the bill. In a compromise that mollified some Administration concerns, the Senate bill would allow all Federal agencies to store mixed wastes until the end of 1993. If treatment and storage technology is unavailable at that time, agencies would be allowed to stockpile their wastes until July 1997. Government ships were also exempted from classification as hazardous waste sites.

Conferees were picked in the last days of the session. Senator Mitchell's aides said he expects the bill to be cleared early next year for the President's signature.

### G. Fitness for Duty

Three items of interest regarding fitness for duty issues occurred in the past year. First, as they have for the past few Congresses, Reps. Dingell (D-MI) and Bliley (R-VA) introduced H.R. 33, the Drug Testing Quality Act. The bill would affect the NRC's Fitness for Duty rule in the following ways: 1) licensees would no longer be able to test for a broader panel of drugs than those listed in the rule; 2) licensees would no longer have the option of setting a lower cutoff for the drugs they test for than provided for in the rule; 3) onsite testing would effectively be eliminated due to the costly requirement that preliminary and confirmatory testing be conducted by the same lab and that these labs be certified by HHS; 4) suitability inquiries would be prohibited; and, 5) employees could not be removed from their jobs before confirmatory tests were received and reviewed by a Medical Review Officer.

H.R. 33 was approved by Subcommittee in July without a hearing, and the full Energy and Commerce Committee approved it by voice vote in September. The House may approve it soon, after which it would be considered by the Senate Labor and Human Resources Committee; or, Rep. Dingell may attach H.R. 33's provisions to another bill (it was attached last year to the Crime bill, but was dropped in conference). Senator Hatch (R-UT), the ranking minority on Senate Labor and Human Resources Committee, has introduced S. 2008, "Quality Assurance in the Private Sector Drug Testing Act." His bill also would require the use of HHS certified labs for screening and confirmatory tests.

Second, Congress strongly endorsed drug and alcohol testing as a means to protect the public safety by requiring such testing in the transportation sector through language in the Transportation Appropriations bill.

Third, of interest to the fitness for duty program for NRC employees, Congress required in the NASA Authorization bill (P. L. 102-195) preemployment, random, reasonable suspicion, and post-accident alcohol testing of NASA employees in certain positions. Whether or not Congress will extend alcohol testing to other Federal employees in similar positions is uncertain.

### H. Government Energy Efficiency Act

In May, Senator Glenn (D-OH) introduced S. 1040. This legislation would require Federal agencies to procure energy-efficient products and services, establish a demonstration program to install energy efficiency technologies in Federal buildings, and establish incentives award programs for energy savings (such as allowing 1/3 of an agency's savings to be used for employee benefits programs). The Senate Governmental Affairs

Committee, which Senator Glenn chairs, held a hearing in May followed by Committee approval in June. Rep. Markey (D-MA) introduced a companion bill, H.R. 2452, in the House; no action has occurred.

#### I. Hatch Act

President Bush vetoed legislation in the last Congress which would have allowed Federal workers to have greater participation in political activities. This year, legislation was reintroduced (S. 914 and H.R. 20). Early in the year, it appeared that new members of the Senate provided sufficient votes to override a veto; however, the Administration is considering proposing Hatch Act regulations which may change the vote mix in support of legislative revisions. In the House, there are sufficient votes to override a veto; however, the Speaker announced that he will not move H.R. 20 until the Senate acts.

#### J. Paperwork Reduction Act

Legislation to reauthorize the Office of Information and Regulatory Affairs has been bogged down by continued debate over OMB's role in delaying or changing agencies' proposed rules. Late in the last Congress, Senator Glenn (D-OH) developed a compromise with the Administration, which failed at the last moment due to a hold being placed on the bill. Senator Glenn reintroduced the compromise this year, S. 1044, but the White House has signalled that it no longer supports it. Subsequently, Senator Nunn introduced another reauthorization bill, S. 1139, for which White House support has been indicated. Action on either bill is awaiting confirmation of Frank Hodsoll to fill OMB's new position of Deputy Director for Management (created by the Chief Financial Officer law), so that the Governmental Affairs Committee could have the benefit of OMB's views. The Senate confirmed Mr. Hodsoll right before recessing, so the bills may move early in 1992.

#### K. Procurement Integrity

Out of concern that ethics requirements (particularly post-employment restrictions) needed to be tightened for Federal procurement officers, in August the Senate approved S. 1145, the Office of Government Ethics Amendment. In November, the House Judiciary Committee ordered to be reported H.R. 2828, which addresses this same issue. Additionally, as the Defense Authorization bill, H.R. 2100, progressed through Congress, both the Senate and House added separate provisions on procurement integrity. In the final version of H.R. 2100, however, these provisions were dropped. It is likely that this issue will be

revisited next year, since both H.R. 2828 and S. 1145 are awaiting consideration by the House.

L. Resource Conservation and Recovery Act (RCRA)

S. 976 would reauthorize RCRA and set broad new guidelines for regulations regarding recycling, landfill standards, and interstate movement of solid waste.

Extensive hearings were held in September 1991 before the Senate Environment and Public Works Subcommittee on Environmental Protection. William Reilly, EPA Administrator, testified against any new layer of regulations. Senators were dismayed at hearing this lack of support for S. 976. However, markup in Subcommittee is still scheduled to occur before Congress adjourns this year.

The House Energy and Commerce Committee's Transportation and Hazardous Materials Subcommittee has held several RCRA reauthorization hearings this year. Before adjourning, Chairman Al Swift introduced part of his planned RCRA legislation (H.R. 3865). He will introduce a second bill next year, and his Subcommittee is expected to markup the legislation in 1992.

M. Senior Executive Service (SES) Improvements Act

In November, Congress approved the SES Improvements Act, P.L. 102-175. This Act: (1) encourages the use of sabbaticals, training, and details by career SES employees; (2) limits the ability of a political appointee to reassign SES employees before 120 days have passed since appointment; (3) authorizes the Merit Systems Protection Board (MSPB) to mitigate penalties to conduct cases involving members of the SES (MSPB does not have jurisdiction in non-conduct cases); and, (4) requires that, when competitive service employees are assigned to the SES, they receive at least the same level of pay as they were previously earning. This last provision does not apply to NRC employees since they are not in the competitive service; however, the NRC is not precluded from following such a policy.

N. Waste Isolation Pilot Plant (WIPP)

WIPP is an unlicensed defense-only nuclear waste repository built near Carlsbad, New Mexico by the Department of Energy to permanently store defense transuranic waste. Permanent land withdrawal is needed before the facility can operate.

On November 5, 1991, the Senate passed by voice vote S. 1671, the Waste Isolation Pilot Plant Land Withdrawal Act of 1991. The bill provides for permanent land withdrawal, makes EPA an

independent regulator of the facility, provides for a seven year test phase and \$600 million for New Mexico. The Administration supports S. 1671.

The House Armed Services Committee reported out its version of H.R. 2637 on November 21, 1991. The bill is very similar to S. 1671 and is also supported by the Administration.

The House Interior and Insular Affairs Committee reported out its version of H.R. 2637 in June. The Bill provides for a ten year land withdrawal, makes EPA an independent regulator of the facility, authorizes funds for the State of New Mexico, and requires that final EPA radiation standards be in place before the test phase can begin.

The House Energy and Commerce Committee reported out its version of H.R. 2637 in November. This bill is similar to the Interior Committee legislation, but it does not provide support funds to the State of New Mexico. These bills are opposed by DOE because they require that EPA standards be in place before the test phase can begin.

The House Committees on Armed Services, Interior and Insular Affairs, and Energy and Commerce, could not reach an agreement for consideration of WIPP legislation by the full House before adjournment. The bill should be considered by the House of Representatives during 1992.

The House Report contains the following language not contained in the Senate Report:

The Committee is encouraged by the Nuclear Regulatory Commission's rulemaking on standardization and licensing reform and believes that this action is a major step towards removing the uncertain licensing process as a major obstacle to continued development of nuclear power. The Committee has long urged the Commission to take action on these issues and believes the final rule to be a major step in making necessary improvements in the nuclear licensing process.

The Committee strongly urges the Commission to devote the necessary resources to expedite the review and certification process of the standard reactor designs submitted to the NRC for approval. The Committee also urges that priority be given to expediting the review of reactor life extension. SR

The Committee is concerned that the NRC not take any regulatory action which would have a negative impact on the nuclear training programs developed by the nuclear industry.

The Senate Report contains the following language not contained in the House Report:

The Committee believes that timely completion of design certification reviews for new standardized reactor designs, is vital to making the nuclear option available to electric utilities in their mid-1990's planning process so as to meet the country's baseload generation needs by the end of the decade. In this regard, the Committee remains concerned about schedule slippages for completion of design certification reviews by the Commission for evolutionary and passive reactors and is disturbed by the Commission's failure to fully respond to the Congress' previous directive to comply with the earlier announced schedule. Since the Commission, in its recent action, has defined the required level of design detail for these new designs that is necessary to ensure public health and safety, the Committee directs the Commission to dedicate the necessary resources to the design review process to maintain the schedule for completing certification review for evolutionary and passive reactors by 1991-92 and 1994-95 respectively. The Committee further directs the Commission to submit a report annually with the budget request, describing progress in the certification of standardized advanced light water reactor designs, plans for current and subsequent fiscal years and the resources necessary to maintain the established schedules. HR

The Committee also urges that priority be given to expediting the review of plant license renewal. The Committee is also concerned that the NRC not take any regulatory action which would have a negative impact on the nuclear training programs developed by the nuclear industry.

Finally, the Committee notes increases in the Commission's requests year after year in staffing and funding in every mission area. At some point, increased spending on research in areas with direct connections to operational reactor safety, and increased numbers of regulations in ever-expanding areas of reactor operations, will bring diminishing returns and lead to overregulation that may, in fact, impact the level of safety achieved to date. Therefore, the Committee questions the need for across-the-board increases in all mission areas and directs the Commission to initiate an external review of the effectiveness and cost efficiency of proposed additional programs.

(177)

Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1991.....	+89,773,574
Budget estimates of new (obligational) authority, fiscal year 1992.....	-332,304,900
House bill, fiscal year 1992.....	+500,852,600
Senate bill, fiscal year 1992.....	+908,000

**VIC FAZIO,**  
**LAWRENCE SMITH,**  
**BILL ALEXANDER,**  
**JOHN P. MURTHA,**  
**BOB TRAXLER,**  
**JAMIE L. WHITTEN,**  
**JERRY LEWIS,**  
**JOHN EDWARD PORTER,**  
**BARBARA P. VUCANOVICH,**  
**JOSEPH M. McDADE,**  
*Managers on the Part of the House.*

**HARRY REID,**  
**BARBARA A. MIKULSKI**  
 (except for amendment No. 1),  
**BROCK ADAMS**  
 (except for amendment No. 1),  
**DANIEL E. INOUYE,**  
**SLADE GORTON,**  
**MARK O. HATFIELD,**  
**TED STEVENS,**  
*Managers on the Part of the Senate.*

**CONFERENCE REPORT ON 2427**

Mr. BEVILL submitted the following conference report and statement on the bill (H.R. 2427) making appropriations for energy and water development for the fiscal year ending September 30, 1992, and for other purposes:

**CONFERENCE REPORT (H. REPT. 102-177)**

The Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2427) "making appropriations for energy and water development for the fiscal year ending September 30, 1992, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 3, 5, 6, 16, 17, 18, 19, 20, 29, 33, 35, 37, 42, 51, and 52.

That the House recede from its disagreement to the amendments of the Senate numbered 27, 40, 41, 43, 46, 50, 54, and 55, and agree to the same.

**Amendment numbered 1:**

That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert \$194,427,000; and the Senate agree to the same.

**Amendment numbered 11:**

That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment, as follows:

Delete the matter stricken by said amendment and delete the matter inserted by said amendment; and the Senate agree to the same.

**Amendment numbered 25:**

That the House recede from its disagreement to the amendment of the Senate numbered 25, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert \$13,554,000; and the Senate agree to the same.

**Amendment numbered 26:**

That the House recede from its disagreement to the amendment of the Senate numbered 26, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert \$564,209,000; and the Senate agree to the same.

**Amendment numbered 28:**

That the House recede from its disagreement to the amendment of the Senate numbered 28, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted, insert the following: \$1,472,489,000, to remain available until expended; and the Senate agree to the same.

**Amendment numbered 44:**

That the House recede from its disagreement to the amendment of the Senate numbered 44, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert \$3,500,000; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 2, 4, 7, 8, 9, 10, 12, 13, 14, 15, 21, 22, 23, 24, 28, 30, 31, 32, 34, 36, 39, 45, 47, 48, 49, and 53.

**TOM BEVILL,**  
**VIC FAZIO,**  
**LINDSAY THOMAS,**  
**JIM CHAPMAN,**  
**DAVID E. SMOGS,**  
**BERNARD J. DWYER,**  
**JAMIE L. WHITTEN,**  
**JOHN T. MYERS,**  
**CARL D. PURSELL,**  
**DEAN A. GALLO,**  
**JOSEPH M. McDADE,**  
*Managers on the Part of the House.*

**J. BENNETT JOHNSTON,**  
**ROBERT C. BYRD,**  
**ERNEST F. HOLLINGS,**  
**QUENTIN N. BURDICK,**  
**JIM SASSER,**  
**DENNIS DECONCINI,**  
**HARRY REID,**  
**MARK O. HATFIELD,**  
**JAKE GARN,**  
**THAD COCHRAN,**  
**PETE V. DOMINICK,**  
**ARLEN SPECTER,**  
**DON NICKLES,**  
*Managers on the Part of the Senate.*

**JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE**

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two houses on the amendments of the Senate to the bill (H.R. 2427) making appropriations for energy and water development for the fiscal year ending September 30, 1992, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effects of the action agreed upon by the managers and recommended in the accompanying conference report.

Report language included by the House which is not changed by the report of the Senate, and Senate report language which is not changed by the conference is approved by the committee of conference. The statement of the managers, while repeating some report language for emphasis, does not intend to negate the language referred to above unless expressly provided herein.

**TITLE I—DEPARTMENT OF DEFENSE—CIVIL**

The summary tables at the end of this title set forth the conference agreement

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**DEPARTMENT OF CORPS OF ENGINEERS**

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ated in fiscal amount reque ment activitie in fiscal year amount inclu search and de eration and de

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