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

June 22, 1978

MEMORANDUM FOR: Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford

FROM: Carlton R. Stoiber
Assistant General Counsel

SUBJECT: INTERAGENCY COMMENTS ON
NRC'S MILL TAILINGS BILL

This memorandum is to inform you of the latest developments regarding comments received from Executive Branch agencies on NRC's proposal to clarify the Commission's jurisdiction over mill tailings. The Commission's draft bill (See SECY-78-207 and -207A) was sent to OMB to obtain the views of other affected agencies when the Commission determined that such an initiative would be desirable. On Wednesday, June 14, 1978, a meeting was called by OMB to discuss the Commission's draft legislation. Representatives from OMB, CEQ, EPA, DOE and Department of Interior attended the meeting; OGC, OPE, OELD and NMSS were represented on the Commission's delegation. During the meeting three agencies raised concerns about provisions of the NRC draft bill. After offering a preliminary reaction to these comments, we agreed to review the NRC submission to determine whether the points raised could be accommodated. During the past several days we have discussed some possible approaches with the other agencies, and have developed some language which might be included in the bill or transmittal documents. This memorandum will outline the concerns raised by other agencies and indicate the status of our discussions at the present time. With regard to most of the agency comments, I believe we are close to reaching a resolution satisfactory to all parties. By the time of your meeting this afternoon, additional specific language to resolve agency con erns will hopefully have been developed.

Contact:
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Matters Raised by the Environmental Protection Agency

The most significant concerns about the bill were raised by EPA, and primarily involved the issue of how EPA's regulatory authority would be affected by the NRC legislation.

1. The first issue raised by EPA was how the legislation would affect that agency's authority under RECRA (Resource Conservation and Recovery Act). Basically, EPA wanted to be sure that the scope and degree of government control and authority over mill tailings was clear, and that consistent standards would be applied. A primary concern here apparently involves non-radiological toxic substances which might be found in tailings. EPA noted that the NRC bill made no reference to RECRA, as did the DOE reclamation proposal which states that any standards developed by EPA under RECRA will be applied by DOE in conducting the program. Therefore, EPA has suggested that the NRC bill contain some mention of RECRA, with an indication that the Commission would apply standards consistent with RECRA. During the OMB meeting, NRC staff questioned the need for such a provision as being an unnecessary duplication of NRC authority. However, the Commission should consider whether it might not be desirable to include some reference to how EPA's RECRA authority would be affected by the NRC bill in either the Speaker letter or the section-by-section analysis.

2. EPA also was concerned about how the legislation would affect its authority under the Atomic Energy Act. We explained that the NRC proposal was not intended to abrogate any of EPA's general authority to set ambient radiation standards. We agreed to develop language to make that fact clear, and have suggested to EPA that the matter be handled by including the following language on page 2 of the Speaker letter:

> "On the other hand, Atomic Energy Act authority transferred to EPA under Reorganization Plan No. 3 of 1970 would permit EPA to establish ambient environmental radiation standards for the new class of byproduct materials."

After considering our proposal, EPA has expressed a preference for placing language of this type -- at least -- in the section-by-section analysis of the NRC bill and perhaps, to make the matter absolutely clear, also in NRC's proposed bill.

3. EPA also mentioned that the definition of byproduct material contained in the NRC bill would not extend Commission licensing authority to mills which were using feed stock of less than 0.05 percent uranium. Apparently there are some mills using such material to extract uranium. We agreed that this defect should be cured, and suggested that the definition used in the NRC bill be amended. We would propose removing the reference to section 11(z)(2) of the Atomic Energy Act, and to define byproduct material as including "the naturally occurring daughter of uranium and thorium found in tailings or wastes produced by the extract of concentrations of uranium or thorium from any ore processed primarily for its source material content." (Underlined material is new.) DOE has reviewed this proposed language change and asked how this definition would apply to phosphate tailings which might be processed for their uranium content. In our view, such activities should be subject to NRC licensing; however, there may be some remaining ambiguities in the definition which should be clarified.

4. EPA also raised the issue of how mill tailings transferred to federal ownership under the statute would be regulated, and expressed the view that NRC regulation of such tailings would be desirable. This also raises the question which arose during the hearings before Congressman Dingell, namely whether NRC legislation should include some provision for NRC monitoring of reclaimed mill tailings piles after DOE's reclamation program has been completed. In the Dingell hearings it was agreed that NRC would develop some alternatives in this regard.

Matters Raised by DOE

The Department of Energy was primarily concerned about the relationship between the NRC proposal and its own tailings reclamation bill (H.R. 12535). DOE suggested that some language in the NRC bill or accompanying

material should be made to make it clear that sites covered by the DOE program would be exempted from any requirement for NRC licensing. It would be desirable to clarify the fact that NRC does not intend to duplicate DOE oversight during the reclamation phase. However, the question mentioned above, about what regulatory oversight might be appropriate with respect to reclaimed sites after the DOE program has been concluded still requires an answer.

Matters Raised by the Department of Interior

1. Interior was primarily concerned that the regime established by the NRC bill would not provide an opportunity for Agreement States to impose their regulatory authority on self-governing Indian tribes. By making mill tailings a licensable byproduct material, the bill could have the potential for such a result. Since at least four mill tailings sites are owned by Arizona's Navajo tribe, this matter is of some concern to Interior, in its capacity as trustee for the tribe. We suggested handling the matter by the following insertion on page 4 of NRC's Speaker letter:

> "In this context, we would view Indian lands as federally owned lands as legal title was held in trust by the United States. All such lands were subject to a resolution on alienation imposed by the United States. The provision is not intended to affect the legal relationship of self-governing Indian tribes to the United States or to the several states."

After considering this language, Interior has expressed doubt about whether our suggested approach adequately deals with the problem. Therefore, it may be desirable to include in the statute some specific mention of how mill tailings sites on Indian reservations would be handled.

2. Interior also questioned the desirability of an explicit statutory exclusion of NRC as an agency which might have custody over an abandoned or donated mill tailings site. OMB agreed that it would be better to leave the matter to resolution by the President. It would seem reasonable to expect that the President would recognize the inappropriateness of giving a strictly regulatory agency

a land custody role. Therefore, we believe that the statutory exclusion of NRC could be removed from the bill.

cc: OPE
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SECY (2)

ENCLOSURE 7

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Honorable Jennings Randolph
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The purpose of this letter is to provide you with the Administration's views on the differing House and Senate-passed versions of S. 562, "Nuclear Regulatory Commission Authorizations." Your assistance in making these views available to the conferees will be appreciated.

Emergency Planning and Reactor Licensing

Both the House and Senate bills contain new and comprehensive provisions on the relationship of State planning for radiological emergencies with nuclear reactor licensing. Section 202 of the Senate version makes (1) issuance of operating licenses for nuclear reactors contingent on Nuclear Regulatory Commission (NRC) concurrence in a State's emergency response plan and (2) continued operation of currently licensed plants contingent upon a State having an approved plan by June 1, 1980. The section also provides new authorities for development by NRC of criteria and standards for assessments of State plans and provides that these activities be carried out in consultation with the Director of the Federal Emergency Management Agency (FEMA). Certain minimum requirements for State plans are specified. Alternatively, Section 104 of the House bill provides that NRC shall (1) establish, by rule, standards for response plans, (2) review plans to assess their adequacy, and (3) report on determinations to the Congress.

With respect to licensing restrictions, the Administration concurs with the views already expressed to the conferees by the NRC that any such restrictions be provided through rulemaking instead of statute. We believe that administrative flexibility is essential in this area, and accordingly, we urge the deletion of these restrictions during conference.

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Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
U.S. House of Representatives
Washington, D.C. 20515

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Requirements for Notice of Nuclear Waste Shipments

Notice to States. Both versions of S. 562 contain requirements for notice to be provided to the States for certain nuclear waste shipments. The Senate language is in Section 210 and the House language is in section 105. The Department of Transportation (DOT) has previously expressed the view that such a statutory provision is unnecessary since the Executive already has the authority to require such notification and is exercising it via the rulemaking process.

With regard to the specific provisions, Section 210 of the Senate bill is clearly preferable to Section 105 of the House bill because it would allow the NRC to exempt certain types and quantities of waste. There are approximately 150,000 packages of commercial radioactive waste that are transported annually and which are comprised, in large part, of relatively harmless radiopharmaceutical waste material. Absent such an exemption mechanism, the States would be flooded with essentially unimportant notifications.

Preferable to either version, however, would be a provision where the notification requirement is confined to the types of shipments about which people are most concerned because of the possibility, however problematical, that a transportation accident could result in a catastrophic release of radiation. Accordingly, DOT recommends that the notification provision in S. 562 be amended by adding the words "high-level" (and in the Senate version, removing the language giving the NRC exemption authority), so that in pertinent part the bills would read: "The [NRC] ... shall promulgate regulations providing for timely notifications ... prior to the transport of high-level nuclear waste, including spent fuel ..." With such an amendment, notification would be preserved for those shipments containing large quantities of radioactivity, and the NRC would be relieved of the responsibility of establishing the exempt categories by regulation. We note that although it has a generally understood meaning as a term of art, there is presently no statutory or regulatory definition of high-level nuclear waste and the NRC would have to develop one by regulation.

Foreign-Flag Vessels. There is another aspect of the notification provision, should it be enacted, that the Department would like to address. The present House and Senate versions would both cover transport by vessels. We feel, however, that this should be made explicit. Under accepted principles of international law, a country may not unilaterally require notification of entry into territorial waters (and hence across a State boundary) by foreign-flag vessels that are

movement of special nuclear material or byproduct material by any mode, and any loading, unloading, or storage incidental thereto;

(2) the term "commerce" means trade, traffic, commerce, or transportation, within the jurisdiction of the United States, (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A); and

(3) the term "nuclear waste storage installation" means a facility or area the purpose of which is to contain nuclear byproduct material.

Safeguards Information

A number of issues relating to Section 302(a)(1) of the House-passed bill have been identified by concerned Executive branch agencies. These agencies are currently working with NRC to address these concerns. In the near future, we anticipate advising the conferees on whether or not the Administration favors such a provision. In any event, it is likely that we will be recommending substantive changes.

Other Provisions

Finally, the Administration recommends that the following provisions be deleted. We believe that those types of provisions (1) provide unnecessarily detailed guidance on matters which should be left to the discretion of the Commission; (2) impose an unnecessary administrative and workload burden on the Commission at a time when resources should be devoted to more urgent substantive matters; and (3) would duplicate many activities that are already underway. Accordingly, we strongly recommend that the following be omitted from the conference bill:

1. The language in Sections 101(a)(2), (4), and (6) of the Senate and House bills and section 101(a)(7) of the Senate bill which specify the number of personnel to be assigned to a particular activity. Such requirements hamper effective personnel management and, to the best of our knowledge, are unprecedented in NRC authorizing legislation;

2. Sections 101(c) and (d)(2), respectively, of the Senate and House bills which would require the establishment of a Senior Contract Review Board. The discretion to establish and disestablish a Board should remain with the

merely transiting through such waters. With respect to foreign-flag vessels, therefore, the notification requirement should apply only when such a vessel is bound for a U.S. port. Therefore, we would suggest the following changes in the two versions of S. 562. In the House version, that the period at the end of the first sentence of section 105(a) be changed to a comma, and that the following language be added: "provided that, in the case of a foreign-flag vessel entering the territorial waters of the United States, such notification shall be required only where such vessel is bound for a United States port." In the Senate version, we would recommend that, in Section 210, the colon immediately before the proviso be changed to a comma and the following language added: "except that, in the case of a foreign-flag vessel entering the territorial waters of the United States, such notification shall be required only where such vessel is bound for a United States port ... "

Sabotage of Nuclear Facilities

Section 212 of the Senate bill and Section 303 of the House bill establish criminal sanctions for acts of sabotage involving nuclear facilities. Although the possible fine appears to be unrealistically low in the House bill, DOT much prefers the language in the House provision, which extends coverage to certain aspects of transportation. As the House provision now stands, however, applicability of Section 303 is unnecessarily restricted to those instances when the special nuclear material or byproduct material is actually in a transportation vehicle. The present House wording, "in a carrier," would not provide coverage under the provision for the material when it is in the hands of the shipper or when it is being loaded, unloaded or stored incident to carriage.

DOT strongly urges that Section 303 of the House bill, with the following changes, be adopted by the conference committee, in lieu of Section 212 of the Senate bill. First, that the conference replace the possible $1,000 fine in the House provision with the $10,000 figure contained in the Senate bill. Second, and most importantly, that the words "contained in a carrier" in Section 303(a) of the House bill be replaced with the following language: "during its transportation in commerce ..." If this change is made, Section 303(b) should be revised as follows:

(b) ***
(1) the term "transportation" refers to any

Commission; otherwise, it will likely remain a permanent feature of the Commission whether needed or not;

3. Section 101(c) of the House bill requires a majority vote by the Commission before entering into any contract, in excess of $20,000, for research, study, or technical assistance on domestic safeguard matters. We believe that the time of the Commissioners should not be unduly diverted from matters of more pressing national concern. Moreover, this kind of activity should be the responsibility of the chairman as principal executive officer, working within the policies established by the Commission. The proposed language would undermine the ability of the chairman to free the Commission of involvement in implementing detail; and

4. Sections 106, 204, and 206 of the Senate bill impose an additional workload burden on the Commission at a time when efforts are already being concentrated on similar activities and other high priority tasks. Respectively, these sections require (1) an independent review of the Commission's management structure, process, procedures, and operations; (2) preparation and publication of a National Contingency Plan; and (3) an investigation and study of communications problems during the Three Mile Island accident.

In closing, we urge the conferees to be cognizant of the added workload and programmatic and administrative complexities which will likely result if the aforementioned provisions are included in the conference bill. Also, as noted in the Commission's January 13, 1980 letter to the conferees, the Commission is developing an Action Plan which " ... will consolidate and prioritize all of the issues which have been identified as a result of the various TMI reviews." As you know, Commission implementation of the Action Plan will be a significant and essential undertaking. We urge that additional workload burdens on the Commission be minimized so that implementation of the Action Plan, once approved, can proceed in the most efficient and responsive manner.

Sincerely,

(Signed) Jim McIntyre

James P. McIntyre, Jr.
Director

Enclosures

cc: Official File
DO Files
LR Chron
Mark Korrigan (ESD)
Nye Stevens (PRP)
John Ahearne (NRC)
George Jett (FEMA)
Mark Dodson (DOT)
Gael Sullivan
H. Harris
RDI Chron

LRD:JMurr:pjf:1/25/80

ENCLOSURE 8