

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

May 28, 1993

The Honorable Mike Synar, Chairman Subcommittee on Environment, Energy and Natural Resources Committee on Government Operations United States House of Representatives Washington, D.C. 20515

Dear Mr. Chairman:

I am transmitting five enclosures to Questions 9f and 12c of your March 25, 1993 letter which we ask not be made publicly available. Enclosures 4 and 8B to Question 9f contain attorney/client confidential information, and the Enclosures to 12c are considered proprietary and are also exempt from disclosure under FOIA.

Since these documents have not been publicly disclosed, we request that you preserve their confidentiality by restricting access and use to the Members and Staff of the Subcommittee.

If I can be of further assistance, please contact me.

Sincerely,

Ivan Selin

Enclosures: As stated

cc: Rep. J. Dennis Hastert (w/enclosures)

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Congress of the United States

Mouse of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

2187 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

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March 25, 1993

The Honorable Ivan Selin Chairman U.S. Nuclear Regulatory Commission Washington, D.C. 20555

Dear Mr. Chairman:

Pursuant to its authority under Rules X and XI of the U.S. House of Representatives, the Subcommittee on Environment. Energy, and Natural Resources has been conducting a review of the activities of the U.S. Nuclear Regulatory Commission (NRC) in the regulation of Agreement States under Section 274 of the Atomic Energy Act. Agreement States regulate approximately two thirds of all materials licensees in the United States.

Subcommittee staff has conducted a number of interviews with representatives of the Office of State Programs, the Office of General Counsel, and the Office for Analysis and Evaluation of Operational Data (AEOD) and has communicated the Subcommittee's interest in obtaining additional information concerning the Agreement State program. In order to clarify the exact nature of the regulatory and data collection requirements that apply to Agreement States and to assist the Subcommittee in understanding the performance of the NRC's Agreement State program, please provide the following documents and information:

communications, and supporting documentation including questionnaires, review comments, and review findings for all biennial program reviews and interim reviews for the following States for the period 1987 to the present:

Alabama Kentucky Kansas

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Louisiana
Mississippi
New Mexico
Texas
Arizona
California
North Dakota
Washington

1b) Copies of all NRC letters; confirmatory communications; supporting documentation including questionnaires, review comments, and file reviews; and intra-egency memoranda and communications, including field notes and memoranda prepared by NRC regional Agreement State program personnel; related to all biennial program reviews and interim reviews for the following States for the period 1980 to the present:

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Maryland
New Hampshire
New York
Tennessee
Iowa
Nebraska
Idaho

lc) Copies of all NRC 'All Agreement States' letters and communications sent to all Agreement States, or subgroups of Agreement States, within the past five years.

ld) Identify the NRC officials, by position, responsible for the determination, approval and transmission of the NRC's findings of the biennial and interim reviews of State programs and describe this process including the role of the Commissioners.

2a) Identify all data reporting requirements required by NRC STATES for Agreement States (i.e. data to be reported to NRC Statutory basis for these requirements.

2b) Identify all data reporting requirements (in addition to those identified in 2a) required by agreements negotiated between NRC and Agreement States (i.e. data to be reported to NRC by Agreement States). Cite the regulatory and statutory bases for these requirements.

2c) Identify all types of data reported to NRC by Agreement States on a voluntary basis (in addition to those identified in 2a and 2b).

2d) Identify, for each category of data identified in Items 2a, 2b, and 2c, the Agreement States which have and have not reported 5 data for each year for the past five years (1988 through 1992)

and include the date on which the report was submitted. Note where submissions have been received, but not within NRC deadlines.

3a) Describe the extent to which Agreement States are required to comply with Section 208 of the Energy Reorganization Act regarding identification of abnormal occurrences and the extent to which the NRC is required to include events that occur in Agreement States in NRC's annual report pursuant to this section. Provide applicable regulatory and legal citations.

from Agreement States is complete and accurate.

3c) Appendix C of the AEOD Annual Report (NUREG-1272) contains a report on Nonreactor Events and Misadministrations. Events reported span more than one year and include reports from only 16 of 29 Agreement States. Explain why AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD's appendix from only 16 not include data from all of the AEOD appendix from t how events and misadminstrations reported by AEOD are actually collected and how AEOD certifies the accuracy of data reported by Agreement States.

3d) The data collected from Agreement States as part of biennial compliance and adequacy reviews appears to include reporting of incidents and enforcement actions involving nuclear materials and licensees. Explain the purpose and content of the information reported by the States, and collected by NRC, as part of these reviews and the extent to which this information is inclusive of bil incidents, over-exposures, license violations and enforcement actions which occur in Agreement States.

3e) Is the data reported in the routine Agraement State reviews discussed in Item 4(d) also reported to AEOD, and to what extent does AEOD rely upon and include this information in its analytical work and annual reports?

50 3f) Provide all responses to the Office of State Programs request for information from Agreement States dated December 17, 1992.

In response to Dennis Rathbun's letter of February 22, 1993 transmitting information regarding the Office of Agreement States, I have the following questions:

a) For all Agreement States, including those where enforcement actions are identified (Item #3 of the letter), identify which States actually have and do not have legal authority to issue civil and criminal penalties, respectively,

and the date such authority was enacted.

- b) For those States which do have authority to issue civil and criminal penalties respectively, identify which states have actually adopted regulations to implement such authority and the date such regulations were adopted.
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- c) For those states that do have civil and criminal penalties, provide a comparison of each States' penalties to the comparable federal penalty.

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d) For all Agreement States, identify which States have, or do not have, criminal investigative capability (i.e. b capability analogous to that of the NRC Office of Investigations).

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e) For enforcement actions identified in Table #2, please provide definitions for each category, e.g. how are "overdue inspections" and "impoundments" defined for the purpose of this table.

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f) Describe the extent to which NRC requires Agreement States to possess civil and criminal penalty authority and to possess investigative capability.

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describe the empirical basis for the information provided. Is this information based on actual inspection rates or on the compilation of States' written procedures? How has NRC verified the accuracy of these frequencies?

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h) Provide the data in Table 2, for each Agreement State, for each category of materials license, for each of the past five years, and calculate the rate of violations and enforcement actions per 100 licensees fore each category, for each State, for each year. Categories of material licenses should be those used by AEOD in its annual report (see Table A-1, NUREG-1272, Appendix

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Sa) Provide the number of medical misadministrations, for each Agreement State, for each of the past five years, and calculate the rate of misadministrations per 100 licensees, for each State, for each year.

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5b) Provide the number of radiation exposures in excess of 10 CFR Part 20 limits, for each Agreement State, for each category of materials license, for each of the past five years, and calculate the rate of such exposures as a percentage of radiation workers (as reported by AEOD in Table 2.3 of the AEOD radiation workers (as reported by AEOD in Table 2.3 of the AEOD annual report) and per 100 licensees for each category, for each State, for each year. Categories of material licenses should be those used by AEOD in its annual report (see Table A-1, NUREG-

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provide the number of incidents of lost, stolen or abandoned materials (including sealed sources), for each Agreement State, for each category of materials license, for each of the past five years and calculate the rate of such losses per 100 licensees for each category of materials license, for each State, for each year. Categories of material licenses should be those used by AEOD in its annual report (see Table A-1, NUREG-1272, Appendix A).

5d) For each NRC region, identify the number of Agreement States and the number of Agreement State licensees in each State, by category of materials license, for each of the past five years. Categories of material licenses should be those used by AEOD in its annual report (see Table A-1, NUREG-1272, Appendix A).

6a) Provide the Phase I report from the task force examining NRC's regional material program and state programs and common performance indicators.

6b) Provide the May 28. 1992 preliminary examination of NRC and ED State materials regulation programs (cited in Thompson February 11. 1993 memo establishing the performance indicator task force).

Programs to Hugh Thompson concerning these offices' procedures for collecting data on misedministrations (cited in NUREG-1272, Appendix C).

(1) bd) Provide all versions of NRC's "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" utilized by NRC since 1975.

b State Comparability Issues and SECY 92-360.

7a) Provide the detailed budget of the activities of the Office of State Programs for each Fiscal Year 1989 through 1993 including regional office activities and training programs and the detailed budget for Fiscal Year 1994 when that budget is approved by the agency. For regional activities, identify funding by region.

7b) Identify the number of Full Time Equivalent (FTE) personnel assigned to activities of the Office of State Programs for each fiscal Year 1989 through 1993 including regional office activities and for Fiscal Year 1994 when the budget for that year is approved by the agency. For regional office activities, identify the number of personnel by region.

7c) Describe the source of funding for the activities of the Office of State Programs including the extent to which it is supported by appropriated funds, user-fees imposed on NRC licensees, and user-fees and reimbursements from Agreement States or Agreement State licensees.

7d) Identify any additional NRC resources (funding and personnel), such as Office of General Counsel and Office of Nuclear Regulatory Research, which support the activities of the Office of State Programs, and identify the source of such funds.

Ba) Describe the statutory basis, practice and policy rationale for the variation in the extent to which Agreement States must adopt NRC regulations, including the categorization of NRC regulations into "divisions" with different requirements for regulations into "divisions" with different requirements for adoption of different types of regulations, and the process used by NRC to make these determinations. Cite applicable regulations.

8b) Provide a table showing which NRC regulations, otherwise applicable to the categories of materials licenses regulated by Agreement States, are actually required to be adopted by Agreement States and which are not required to be adopted.

Bc) Describe the statutory basis, practice, and policy rationals for NRC's general practice of allowing Agreement States a period of three years to adopt those NRC regulations which NRC deems necessary for State compatibility.

8d) Identify any exceptions to the "three year rule" (cited in Item 8c above), i.e. adoption of 10 CFR Part 20 radiation protection regulations revisions, and explain the rationale and statutory basis for these exceptions.

8e) Identify all Agreement States that have already adopted regulations consistent with the revised 10 CFR Part 20 radiation protection regulations.

8f) Describe the extent to which Agreement States are required to adopt NRC's regulatory guidance in their adoption of NRC regulations to meet NRC's compatibility requirements, including use of and adherence to NRC regulatory guides.

8g) Will Agreement States be required to adopt the NRC regulatory guide on "ALARA Levels for Effluents from Materials Facilities" (now Draft Regulatory Guide DG-8013)? If so, to what prevent?

9a) Identify the NRC officials.

9a) Identify the NRC officials, by position, responsible for the negotiation and approval of agreements with States executed pursuant to Section 274 and amendments to such agreements and describe the process for negotiation, approval, and amendment of

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such agreements including the role of the Commissioners.

9b) Describe the NRC's specific procedures and criteria for termination or suspension of all or part of an agreement with a State pursuant to Section 274(j)(l) of the Atomic Energy Act and provide copies of the pertinent regulations, policy guidance, and any other documentation of these procedures and criteria.

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Section 274(j)(1) of the Atomic Energy Act since 1975.

9d) Describe the NRC's procedures and criteria for termination or suspension of an agreement with a state pursuant to the "emergency situations" authority under Section 274(j)(2) of the Atomic Energy Act and provide copies of the pertinent regulations, policy guidance, and any other documentation of these procedures and criteria.

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(9e) Identify any and all actions initiated by the NRC under Section 274(j)(2) of the Atomic Energy Act taken since 1975.

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9f) In 1978, Congress amended Section 274 through enactment of P.L. 95-604. Section 274 was amended again in 1980 by P.L. 96-295. Section 274 was amended a third time in 1982 by P.L. 97-415. For each statutory change, describe the changes made in NRC procedures to reflect such change and provide copies of the pertinent SECY papers, Office of General Counsel memorands, and other materials documenting the incorporation of these statutory changes into NRC regulations, policies, and procedures.

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officials communicating the findings of its reviews of Agreement officials communicating the findings of its reviews of Agreement State programs. These letters are usually issued several months after the review is completed and often describe actions taken by the State in the interim period. Describe the NRC's procedures and parameters for issuance of these letters including timeliness of transmittal and collection of additional information in the interim period, and provide the documentation establishing these procedures and parameters.

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10b) Describe how these practices were changed by the 1987 to reorganization.

11) Describe the extent to which NRC has routine access to an Agreement State's regulatory, investigative and enforcement records, record keeping requirements imposed on Agreement State's for this purpose and identify any exceptions under which an Agreement State may withhold or "seal" regulatory, investigative or enforcement records from NRC review. Provide relevant citations.

12a) In the conduct of its biennial reviews of Agreement States.

NRC does not appear to review licensing or enforcement files of licensees identified in the States' questionnairs as the subject of enforcement actions or involved in incidents related to the handling and use of nuclear materials. Describe the basis for the file reviews conducted by the NRC in its biennial reviews and provide citations to NRC procedures governing these reviews.

12b) Describe the extent to which NRC reviews licensee files where enforcement actions have been taken by an Agreement State or where a licensee has been involved in an incident, and the procedures that apply to such reviews. Provide citations to NRC procedures governing the reviews of States' enforcement actions.

12c) Describe the role of the Office of State Programs in reviewing the actions taken by the State of Maryland with regard to that State's regulation of Neutron Products, Inc. and Sacred Heart Hospital and provide all written communications between NRC and the State of Maryland concerning these two licensees since 1987.

pharmacies, conduct operations in numerous locations covered by multiple NRC and Agreement State licenses. Describe the process the NRC utilizes for tracking licensee activities and overlapping license obligations, e.g. corporate responsibility for radiation safety, at multiple locations for NRC licensees and for Agreement States. Include applicable regulatory citations.

13b) Describe the process NRC utilizes to track, and to communicate to Agreement States, license violations and enforcement actions taken against Atomic Energy Act licensees and employees, including criminal prosecutions, by NRC, the U.S. Department of Justice and Agreement States. Include applicable Process and regulatory citations.

13c) Identify and describe what restrictions exist on Agreement States, under their Agreement status, governing the hiring by Agreement State licensees and the licensing of personnel who have been subject to enforcement actions (such as prohibitions on performing radiation safety or supervisory functions) or criminal prosecutions by NRC, the U.S. Department of Justice, Of Other Agreement States.

In order to assist the Subcommittee, please transmit the requested information as it becomes available, though not later than April 16, 1993. In addition to this request, the Subcommittee will make separate requests for information concerning NRC regulatory practices governing nuclear materials licensees and related data collected by AEOD. If you or your staff have any questions concerning this request, please contact David Berick of the Sabcommittee staff at 202-225-6427.

Thank you for your continuing cooperation with the Subcormittee.

Sincerely.

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Chairman Subcommittee on Environment, Energy, and Natural Resources

cc: The Monorable J. Dennis Hastert Ranking Minority Member THE HUNDRED THREE CONSIDERS

Congress of the United States

Florest of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

2187 RAYBURN HOURS OFFICE BUILDING
WALKINGTON, DC 20818-8143

March 25, 1993

The Honorable Ivan Selin Chairman U.S. Nuclear Regulatory Commission Washington, D.C. 20555

Dear Mr. Chairman:

Pursuant to its authority under Rules X and XI of the U.S. House of Representatives, the Subcommittee on Environment, Energy, and Natural Resources has been reviewing the activities of the U.S. Nuclear Regulatory Commission (NRC) in the regulation of Agreement States under Section 274 of the Atomic Energy Act and NRC practices in the regulation of materials licensees. NRC regulates approximately 8000 materials licensees and Agreement States regulate approximately twice that number.

Subcommittee staff has conducted a number of interviews with representatives of the Office of State Programs, the Office of General Counsel, the Office for Analysis and Evaluation of Operational Data (AEOD), and the Office of Enforcement and has communicated the Subcommittee's interest in obtaining additional information concerning the NRC's regulation of materials licensees. To assist the Subcommittee in understanding the performance of NRC's AEOD and nuclear materials regulatory programs, please provide the following documents and information:

Identify, by category of materials license, the number of NWIS NRC materials licensees (other than reactor facilities), for each State and region for each Fiscal Year 1989 through 1993.

Categories of material licenses should be those used by AEOD in its annual report (see Table A-1, NUREG-1272, Appendix A).

15. 2) Identify, by category of materials license, all data reporting requirements required by NRC regulations for materials licensees regulated by NRC (i.e. data to be reported by NRC licensees to NRC) other than reactor facilities. Categories of material licenses should be those used by AEOD in its annual report (see Table A-1, NUREG-1272, Appendix A). Cite pertinent

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He det Provide the detailed budget of the activities of NRC's Office of Nuclear Materials Safety and Safeguards (NMSS) related to the regulation of nuclear materials, other than those conducted at reactor facilities, for each Fiscal Year 1989 the detailed budget for Fiscal Year 1994 when that budget is approved by the agency. For regional office activities. Also prove through 1993 including regional office activities. Also provide approved by the agency. For regional activities, identify funding by region. Also identify the source of funding, i.e. NRC user-fees, reimbursements from Agreement States, etc. To the extent practical, also identify that portion of the budget

allocated to fuel cycle facilities not regulated Agreement

- 16 JoT Identify, by function, the number of Full Time Equivalent (FTE) personnel assigned to activities of NMSS for each Fiscal Year 1989 through 1993 including regional office activities. Also provide this personnel data for Fiscal Year 1994 when the budget for that year is approved by the agency. For regional office activities, identify the number of personnel by region. For example, identify the number of NRC headquarters and regional personnel responsible for review and approval license applications, amendments, and terminations. Also calculate the rate per 100 non-reactor licensees. To the extent practical, also identify those personnel allocated to fuel cycle facilities not regulated Agreement States.
- It and personnel), such as Office of Nuclear Regulatory Research. which support materials regulation activities, other than those conducted at reactor facilities, for each Fiscal Year 1989 through 1993. To the extent practical, also identify those resources allocated to fuel cycle facilities not regulated Agreement States. Provide this information for Fiscal Year 1994 when the budget for that year has been approved by the agency.
- It d 3d) Identify any additional NRC regional resources (funding and personnel), such as inspection and enforcement personnel, which support materials regulation activities, other than those conducted at reactor facilities, for each Fiscal Year 1989 through 1993, and calculate the rate per 100 licensees. To the extent practical, identify those resources allocated to fuel cycle facilities not regulated Agreement States.
- OC/NMSS/ 162 JeT Two-thirds of all materials licensees in the U.S. -approximately 16,000 -- are regulated by Agreement States pursuant to Section 274 of the Atomic Energy Act. Provide -estimates of the amount of resources identified in Items 3a, 3b, and 3c that directly and indirectly support activities carried out by Agreement States, e.g. development of regulations which are subsequently adopted by Agreement States.

- Identify, by NRC headquarters offices, regional offices and total, the number of materials license applications, amendments, and terminations processed annually by NRC, by category of materials license, for each of the past five years. Categories of materials licenses should be those used by AEOD in its annual report (see Table A-1, NUREG-1272, Appendix A).
- assigned to nuclear materials licensees for each NRC region and total. Also calculate the rate of inspectors (in Full Time Equivalents) per 100 non-reactor licensees for each NRC region and total. To the extent practical, identify those resources allocated to fuel cycle facilities not regulated Agreement States.
- Provide NRC's current requirements for inspection frequency for each category of materials license and describe any changes in these inspection requirements that have occurred in the past five years. Categories of materials licenses should be those used by AFOD in its annual report (see Table A-1, NUREG-1272, Appendix A).
- of inspections performed annually by NRC for each category of NMS materials license for each of the past five years. Categories of material licenses should be those used by AEOD in its annual report (see Table A-1, NUREG-1272, Appendix A).
- 182 Agreement States employ inspection frequencies that differ from NRC. According to information received from NRC, 8

 Agreement States employ inspection frequencies that are greater than NRC. What are the empirical and regulatory bases for NRC's inspection frequencies and are they adequate in light of the experience of Agreement States.
- 18d 5d7 Identify and provide any NRC analyses of trends in AGO NMI) inspection resource needs and frequency rates of materials AGO NMI) licensees prepared since 1985.
- 182 Set Identify, for each state, NRC region and total, the number of NRC inspections that were overdue, for each category of materials licenses, for each of the past five years. Provide NRC's criteria for determining when an inspection is overdue. For example, is an inspection overdue if it occurs a month after the normal inspection frequency? Two months after? Categories of material licenses should be those used by AEOD in its annual report (see Table A-1, NUREG-1272, Appendix A).
- 18 StT Identify, for each state, NRC region and total, the number of violations incurred by, and enforcement actions taken by NRC for, each category of materials license and calculate the rates of such violations and enforcement actions per 100 licensees for

each state. NRC region, and total, for each of the past five years. Categories of material licensess should be those used by AEOD in its annual report (see Table A-1, NUREG-1272, Appendix A).

- of medical misadministrations committed by NRC licensees for each of the past five years and calculate the rate of such misadministrations per 100 licensees for each state, NRC region, and total.
- 20 M Identify, for each state, NRC region and total, all radiation exposures at NRC licensees (other than reactor facilities) in excess of 10 CFR Part 20 limits, for each category of materials NMS license, for each of the past five years. Also calculate the rate of such exposures per 100 licensees for each category for each state. NRC region, and total. Categories of material licenses should be those used by AEOD in its annual report (see Table A-1, NUREG-1272, Appendix A).
- Identify, for each state, NRC region and total, the number of AGOD incidents of lost, stolen, or abandoned materials (including sealed sources) by NRC licensees, for each category of materials license, for the each of the past five years. Also calculate the rate per 100 licensees for each category for each state, NRC region and total. Categories of material licenses should be those used by AEOD in its annual report (see Table A-1, NUREG-1272, Appendix A).

In order to assist the Subcommittee, please transmit the requested information as it becomes available, though not later than April 16, 1993. In addition to this request, the Subcommittee has made a separate request concerning activities of the Agreement State Program.

As the Subcommittee's inquiries proceed, additional requests for information concerning NRC regulatory practices governing NRC nuclear materials licensees and related data collected by AEOD are likely. If you or your staff have any questions concerning these requests, please contact David Berick of the Subcommittee staff at 202-225-6427.

Thank you for your continuing cooperation with the Subcommittee.

MIKE SYNAR Chairman

Subcommittee on Environment. Energy, and Natural Resources

cc: The Honorable J. Dennis Hastert Ranking Minority Member

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CONGRESSIONAL CORRESPONDENCE SYSTEM DOCUMENT PREFARATION CHECKLIST

TYPE OF 1	DOCUMENT	Corres	pondence Rearing	
DOCUMENT	CONTROL	Sensit	ive (MRC Only) Non-sen	sitive
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