The original documents are located in Box 35, folder "Nuclear Regulatory Commission (2)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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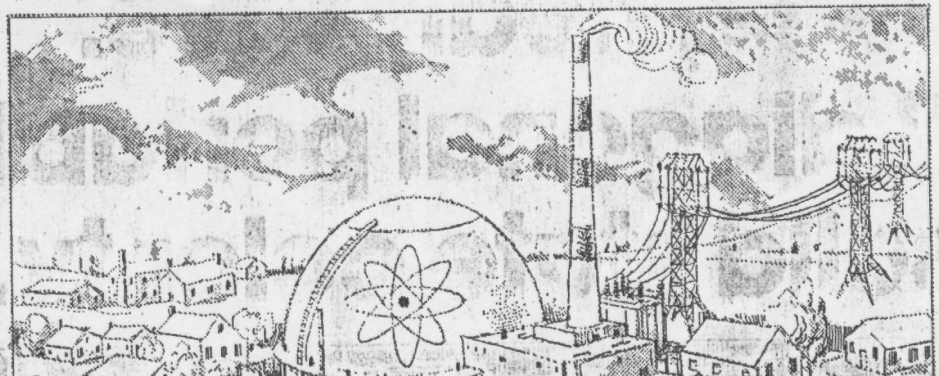
1976

John Glenn

Biting The Nuclear Bullet

Secretary of State Kissinger will appear Tuesday before the Senate Government Operations Committee on a subject on which he has never before testified and which has received but a few paragraphs in occasional foreign



Tuesday 3/9/76

Meeting
3/9/76
~~11:30 a.m.~~
4:00 p.m.

10:15 Monroe Leigh's office called to ask if there is a meeting scheduled at 11:30 this morning.

I called Ken and he said you had indicated you would have the meeting at that time, and that Rex Lee should be included.

11:15 With much checking, etc., Ken suggests we schedule the meeting for 4:00 this afternoon and invite Monroe Leigh, Rex Lee, and Dave Elliott (and whoever they want to bring). Ken and Dudley will also attend.

I have called and invited the people.

THE WHITE HOUSE

WASHINGTON

9189

March 8, 1976

MEMORANDUM FOR

THE HONORABLE EDWARD H. LEVI
ATTORNEY GENERAL

SUBJECT: Applications Pending Before the Nuclear Regulatory Commission for the Export of Special Nuclear Material to the Government of India

Attached is a copy of a letter from the Secretary of the Nuclear Regulatory Commission to the Executive Secretary of the Department of State concerning the above license application and the petitions of three non-governmental organizations which seek leave to intervene in the proceedings.

A copy of the petition for leave to intervene in one of the two proceedings is also attached (the petition in the other proceedings, I understand, is virtually the same).

The outcome of these applications is very critical for the Government of India inasmuch as failure to receive the shipment promptly will force initially a curtailment and eventually a complete shutdown of a nuclear generating facility important to India's economy.

In view of the short time before the Nuclear Regulatory Commission proposes to address these petitions and the urgency of the needs of India for these exports, I would appreciate your assigning this matter to someone in your Department who could represent the Executive branch before the Nuclear Regulatory Commission. We would very much like to have a preliminary meeting tomorrow (Tuesday, March 9) at which representatives of our office, the State Department and the NSC staff would attend.

P.W.B.

Philip W. Buchen
Counsel to the President

Attachments

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

March 5, 1976

Mr. George Springsteen
Executive Secretary
Department of State
Washington, D.C.

Attention: Myron Kratzer, Acting Assistant
Secretary of State (OES)

Dear Mr. Springsteen:

On March 2, 1976, the Nuclear Regulatory Commission was served with petitions seeking leave to intervene in two license applications for the export of special nuclear material to India (License Nos. XSNM-805 and XSNM-845). Copies of these petitions have been furnished previously to your Department through Acting Assistant Secretary Myron Kratzer. The petitioners (Sierra Club, Natural Resources Defense Council, and Union of Concerned Scientists) also request a hearing in connection with the Commission's consideration of the applications.

These petitions constitute the first requests for intervention and hearing on an export licensing application for special nuclear materials received by either the NRC or its predecessor the Atomic Energy Commission. Before ruling on the several issues presented, the Commission wishes to obtain further information and views of concerned government agencies and others to assist it in making its decisions. Accordingly, and consistent with the procedures outlined in Executive Order No. 11902 for furnishing Executive Branch views on nuclear export license applications to the NRC, we invite you to submit views and comments on the issues raised in the petitions.

Also, the Commission believes it would be appropriate for you to inform the Government of India of the NRC's intended course of action for determining the issues raised by the petitions, and its willingness to entertain any views that government may wish to express, either for submission through your Department or independently.

In this regard, the Commission has asked that written statements be filed with it no later than 5:00 p.m., Friday, March 12, 1976, and has scheduled a preliminary oral hearing on issues relevant to the petitions at 10:00 a.m., on Wednesday, March 17, 1976. The hearing will be held in the Commission's Conference Room (Room 1115) at 1717 H Street, N.W., Washington, D.C.

The oral hearing will be addressed to the need or desirability of conducting a hearing on the applications for export licenses, the matters proper to be considered in such a hearing, the procedures to be observed, the standing of petitioners to participate in those proceedings, and the timeliness of the petitions, and not to the issuance or not of the licenses themselves. If the Commission decides to conduct hearings on one or both applications, those hearings will be held at a later date. However, a full written exposition of facts and argument bearing on each of the contentions made in the motions for leave to intervene is desired.

In particular, the Commission invites each of the participants to address the following questions in written and oral presentations:

(1) On what date were notices of the license applications in XSNM-805 and -845 placed in the Public Document Room or actually made known to the petitioners or their attorneys?

(2) Assuming a petition to intervene in the circumstances of this case to be otherwise proper, what standard should govern the timeliness of a petition?

(3) Do you consider that the present petitions are timely?

(4) Are there special factors, such as the possibility of harm to foreign relations interests, that would warrant treating one petition differently from the other with respect to its timeliness? If the impact of any such factors depend significantly upon the promptness with which the export licenses which are the subject of the two petitions are issued, what is the latest time each license might be issued to avoid this impact, taking

into account such feasible alternative methods of transportation and other options which would extend this time period to the fullest extent possible?

(5) In your view, do either of the present petitions state circumstances requiring or making it advisable in the public interest to hold public hearings?

(6) If a public hearing were held, what rules of procedure should govern?

(7) What procedures should apply to the receipt by the Commission of sensitive or classified information bearing on foreign relations issues and the Commission's common defense and security responsibilities?

(8) If a hearing is granted by the Commission on the Tarapur export license applications, are there any issues raised by petitioners which should be excluded from consideration as falling outside the NRC's jurisdiction?

If you have any questions concerning the mechanics of the scheduled hearing or submission of written comments, please contact the Commission's General Counsel, Mr. Peter Strauss, at 634-1398 or 492-7375.

Sincerely,

Samuel J. Chilk
Secretary

cc: All parties
The Assistant to the President
for National Security Affairs,
The White House

Tuesday 3/9/76

Meeting
3/9/76
4 p.m.

1:05 The following people will attend the meeting at 4 o'clock this afternoon (Tuesday 3/9) on the Nuclear Regulatory Commission matter:

Monroe Leigh
Irwin Goldbloom
Dave Elliott
Tenney Johnson (Gen. Counsel, ERDA)
Ken
Dudley
Pete Brush (ERDA)
David Anderson (Justice)
Tom Martin (Justice)
Myron Kratzer (State)

THE WHITE HOUSE

WASHINGTON

March 19, 1976

MEMORANDUM FOR: ED SCHMULTS

FROM: PHIL BUCHEN P.

Attached is my file on Nuclear Exports. Monroe Leigh at State, Dave Elliott at NSC and Tom Martin at Justice are the principal contacts. Ken and Dudley, in our office, know about the matter in case there are any new developments.

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

CHAIRMAN

June 1, 1976

Honorable Philip Buchen
Counsel to the President
The White House

Dear Mr. Buchen:

The Supreme Court today issued a unanimous opinion in Train v. Colorado PIRG. The opinion reversed a decision of the Federal Court of Appeals for the Tenth Circuit which had threatened to create a confusing overlap of Federal nuclear regulatory authority, and which seemed to permit State regulation of matters believed to have been exclusively committed to the regulatory jurisdiction of the Nuclear Regulatory Commission. For your convenience, I enclose a copy of the Supreme Court's opinion and a summary analysis prepared for me by our General Counsel.

The opinion's chief interest, and the likely focus of public attention, is its affirmation of the preemptive Federal authority to regulate the radioactive effluents of nuclear power generating stations and the opinion's broad statement of Federal statutory preemption. The Court is forceful in restating the proposition that, under the Atomic Energy Act, the States lack authority in this area. Although interspersed throughout the Court's opinion, you will find the most pertinent treatment of this matter at pages 13 to 15 of the opinion. As discussed in the attached summary analysis, the Court's holding and its articulation are relevant to the various nuclear control measures now pending ballot or legislative consideration in California and other States.

If I can be of further assistance, please do not hesitate to ask.

Sincerely,

Marcus A. Rowden
Chairman

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

June 1, 1976

MEMORANDUM TO CHAIRMAN ROWDEN

FROM: PETER L. STRAUSS
General Counsel

RE: Train, Administrator of EPA v. Colorado PIRG

You have asked for a summary analysis of the Supreme Court's unanimous decision today in the above case, with particular reference to its significance for Commission relations with other governmental bodies.

This litigation began when residents of Colorado claimed possible harm from water discharges of two nuclear facilities in that State, and sought a declaration that the Federal Water Pollution Control Act, as amended in 1972 (86 Stat. 816), authorized the Administrator of the Environmental Protection Agency to regulate the radioactive materials discharged by those facilities. (One of the two facilities was a nuclear electric generating station licensed by NRC, the Fort St. Vrain plant; the other was the Federal nuclear weapons plant at Rocky Flats.) The United States Court of Appeals for the Tenth Circuit, reversing a decision of Colorado Federal District Court, held that the Act (FWPCA) did authorize the Administrator to regulate these discharges, because that Act defined pollutants to include "radioactive materials." The Court of Appeals refused to look beyond this "plain language" to the legislative history of the statute which, as EPA agreed, showed an intent to cover only those radioactive materials which are not subject to the control of the Nuclear Regulatory Commission under the Atomic Energy Act. On June 1, 1976, the Supreme Court reversed, after examining the legislative history of the FWPCA and concluding that the Administrator did not have authority to regulate effluents already under the regulatory jurisdiction of the NRC pursuant to the Atomic Energy Act.

The Supreme Court found that, even though the FWPCA used the phrase "radioactive materials" in according EPA (and through EPA delegation, the States) nuclear regulatory authority, the legislative history plainly contemplated an exclusion for nuclear uses subject to regulation by the AEC (now NRC) under the Atomic Energy Act. The latter Act authorizes comprehensive controls by the Nuclear Regulatory Commission over the use of statutorily defined "source, by-product, and special nuclear materials -- controls which encompass the radioactivity content of effluents from plants utilizing such materials.

The Supreme Court's opinion explicitly confirms the preemptive nuclear regulatory authority of the NRC under the Atomic Energy Act, which authority first received Supreme Court approval in its summary affirmation in 1972 of a decision to that effect by the United States Court of Appeals for the Eighth Circuit (Northern States Power Co. v. Minnesota (447 F2d 1143, affirmed, 405 U. S. 1035). The Supreme Court's opinion places repeated emphasis on the existing structure of Federal-State authority in the regulation of radioactive materials, the "comprehensive" regulatory scheme created by the [Atomic Energy Act]" (p. 4), and the "pervasive" (p. 14) nature of that regulatory scheme. As the opinion notes,

> "(T)he Atomic Energy Act created a pervasive regulatory scheme, vesting exclusive authority to regulate the discharge of radioactive effluents from nuclear power plants in the (NRC), and preempting the States from regulating such discharges. (p. 13)"

The Court notes that, under the FWPCA, if the Administrator of EPA could regulate such effluents, he could also delegate like authority to the States under the State permit programs, and the States might be able to impose effluent limitations more stringent than those of EPA or NRC. The Court notes, at the outset of its opinion, the language of the Atomic Energy Act that the AEC (now NRC) is authorized to establish "such standards as "it may deem necessary or desirable . . . to protect health or to minimize danger to life or property" (p. 4). The FWPCA legislative history indicated that Congress was aware of the existing preemption of State authority under the Atomic Energy Act and did not wish to disturb it. While the Atomic Energy Act does permit the States to assume a limited regulatory role over some nuclear uses, their programs must be compatible with the NRC's,

> "and States are precluded from playing any role in several significant areas of regulation -- including (emphasis supplied) the setting of limitations on radioactive discharges from nuclear power plants." (p. 14, n. 12)

The Court concluded that the legislative history discussing the preemption issue

> "can only be viewed . . . as an indication that the exclusive regulatory scheme created by the Atomic Energy Act for source, byproduct, and special nuclear materials was to remain unaltered." (Pp. 14-15)

The Court's specific treatment of the Federal preemption question and the seemingly categoric language used by it may become a focus of political discussion in connection with the forthcoming (June 8) vote in California on the proposed Nuclear Safeguards Initiative, the nuclear control legislation now pending before that State's legislature

and other nuclear control initiatives which will be on the November ballot in several additional States. The statements quoted, and the general tenor of the opinion, underscore the preemptive Federal regulatory authority in matters of nuclear safety under the present statutory scheme of the Atomic Energy Act. Some will see in this a clear indication that an affirmative vote on such State control measures will be unavailing under existing Federal legislation. Others may respond by seeking to portray proposed State action as being based on land use control rather than nuclear regulation. Whatever these arguments, at this juncture the Court's June 1 decision is, at a minimum, a legal "fact" which underscores the vulnerability of such proposed State measures. The Supreme Court's adoption of the preemption rationale had not been as clear from its previous actions as it is in this opinions, and its forceful and repeated statement by the Court thus will strengthen arguments regarding the legal ineffectiveness of State control measure.

I would add the final observation that the Court's opinion fosters efficient Federal regulation by avoiding what would have been a troublesome overlap in the authority of two Federal agencies (NRC and EPA). NRC is directly responsible for control of the use of source, by-rpoduct and special nuclear materials and, over the years, has acquired substantial competence and resources for determining what is required to protect the public health and safety, the environment, and common defense and security interests in connection with their use. Fragmenting this authority, or establishing a competing regulatory regime, would be highly inefficient -- productive of delay and confusion and, possibly, even diminshed protection for the public.

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TRAIN, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL. *v.* COLORADO PUBLIC INTEREST RESEARCH GROUP, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 74–1270. Argued December 9, 1975—Decided June 1, 1976

The Federal Water Pollution Control Act (FWPCA) makes it unlawful to discharge "pollutants" into navigable waters without a permit from the Administrator of the Environmental Protection Agency (EPA), and defines the term "pollutant" to include, *inter alia*, "radioactive materials." The Atomic Energy Act (AEA) regulates the production, possession, and use of three types of radioactive materials—source, byproduct, and special nuclear materials—and pursuant to its authority under the AEA the Atomic Energy Commission (AEC) (now succeeded in this capacity by the Nuclear Regulatory Commission) has issued regulations governing the discharge of such materials into the environment by AEA licensees. After the EPA Administrator had disclaimed any authority under the FWPCA to regulate the discharge of these three types of radioactive materials covered by the AEA, respondents, who claimed potential harm from the discharge of radioactive effluents from two nuclear plants in Colorado operated in conformity with AEC standards, brought suit against petitioners, the EPA and its Administrator, seeking a declaration that the definition of "pollutant" under the FWPCA encompasses all radioactive materials, including those regulated under the AEA, and an injunction directing petitioners to regulate the discharge of all such materials. The District Court held that the AEC had exclusive authority to regulate discharges of radioactive materials covered by the AEA, but the Court of Appeals reversed, holding, exclusively by reference to the FWPCA's language and without

Syllabus

reference to its legislative history, that the FWPCA requires the EPA to regulate discharges of all radioactive materials, including those covered by the AEA. *Held:*

1. To the extent that the Court of Appeals excluded reference to the FWPCA's legislative history in discerning the meaning of the statute, the court was in error, for "[w]hen aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" *United States* v. *American Trucking Assns.*, 310 U. S. 534, 543–544. Pp. 6–9.

2. The FWPCA's legislative history reflects a congressional intention not to alter the AEC's control over the discharge of source, byproduct, and special nuclear materials. Therefore, the "pollutants" subject to regulation under the FWPCA do not include such materials, and the EPA Administrator acted in accordance with his statutory mandate in declining to regulate the discharge of these materials. Pp. 9–23.

507 F. 2d 743, reversed.

MARSHALL, J., delivered the opinion of the Court, in which all Members joined except STEVENS, J., who took no part in the consideration or decision of the case.

SUPREME COURT OF THE UNITED STATES

No. 74–1270

Russell Train, Administrator of the Environmental Protection Agency, et al., Petitioners, *v.* Colorado Public Interest Research Group, Inc., et al.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

[June 1, 1976]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The issue in this case is whether the Environmental Protection Agency (EPA) has the authority under the Federal Water Pollution Control Act, as amended in 1972, 86 Stat. 816, 33 U. S. C. § 1251 *et seq.* (Supp. IV) (FWPCA), to regulate the discharge into the Nation's waterways of nuclear waste materials subject to regulation by the Atomic Energy Commission (AEC) and its successors under the Atomic Energy Act of 1954. 68 Stat. 919, 42 U. S. C. § 2011 *et seq.* In statutory terms, the question is whether these nuclear materials are "pollutants" within the meaning of the FWPCA.

I

Respondents are Colorado-based organizations and Colorado residents who claim potential harm from the discharge of radioactive effluents from two nuclear plants—the Fort St. Vrain Nuclear Generating Station and the Rocky Flats nuclear weapons plant. These facilities are operated in conformity with radioactive

effluent standards imposed by the AEC pursuant to the Atomic Energy Act. The dispute in this case arises because the EPA has disclaimed any authority under the FWPCA to set standards of its own to govern the discharge of radioactive materials subject to regulation under the Atomic Energy Act. Respondents, taking issue with EPA's disclaimer of authority, brought this suit against petitioners, the EPA and its Administrator, under § 505 of the FWPCA, 33 U. S. C. § 1365 (Supp. IV), which authorizes "citizen suits" against the Administrator for failure to perform nondiscretionary duties under the FWPCA. They sought a declaration that the definition of a "pollutant" under the FWPCA encompasses all radioactive materials, including those regulated under the terms of the Atomic Energy Act of 1954, and an injunction directing the EPA and its Administrator to regulate the discharge of all such radioactive materials.

On cross-motions for summary judgment, the United States District Court for the District of Colorado held that the AEC had exclusive authority to regulate discharges of radioactive materials covered by the Atomic Energy Act. 373 F. Supp. 991 (1974). The Court of Appeals for the Tenth Circuit reversed, holding that the FWPCA requires the EPA to regulate discharges into the Nation's waters of all radioactive materials, including those covered by the Atomic Energy Act. 507 F. 2d 743 (1974). Because of the importance of the issue involved in this case, we granted certiorari. 421 U. S. 998 (1975). We now reverse.

II

Since 1946, when the first Atomic Energy Act was passed, 60 Stat. 755, the Federal Government has exercised control over the production and use of atomic energy through the Atomic Energy Commission—replaced since the commencement of this litigation by the

Nuclear Regulatory Commission (NRC) and the Energy Research and Development Administration (ERDA).[1] Under the Atomic Energy Act of 1954 (AEA), private parties are permitted to engage in the production of atomic energy for industrial or commercial purposes, but only in accordance with licenses issued by the AEC (NRC) in the furtherance of the purposes of the Act. 42 U. S. C. § 2133.

The comprehensive regulatory scheme created by the AEA embraces the production, possession and use of three types of radioactive materials—source material,[2] special nuclear material,[3] and byproduct material.[4] In carrying out its regulatory duties under the AEA,

[1] Under the Energy Reorganization Act of 1974, Pub. L. No. 93-438, 88 Stat. 1233, 42 U. S. C. § 5801 *et seq.* (Supp. IV), the licensing and related regulatory functions of the AEC were transferred to the NRC; ERDA assumed responsibility for the operation of government nuclear research and production facilities. 42 U. S. C. §§ 5841 (f), 5842, 5814 (c) (Supp. IV). We will refer generally to the AEC to cover the NRC and ERDA after their formation, except where the context requires specific designation of the NRC or ERDA.

[2] "The term 'source material' means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 2091 of this title to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time." 42 U. S. C. § 2014 (z).

[3] "The term 'special nuclear material' means (1) plutonium, uranium enriched in the isotopes 233 or in the isotopes 235, and any other material which the Commission, pursuant to the provisions of section 2071 of this title, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material." 42 U. S. C. § 2014 (aa).

[4] "The term 'byproduct material' means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material." 42 U. S. C. § 2014 (e).

the AEC is authorized to establish "such standards . . . as [it] may deem necessary or desirable . . . to protect health or to minimize danger to life or property." 42 U. S. C. § 2201 (b). See also 42 U. S. C. §§ 2073 (b), (e); 2093 (b); 2111; 2133 (a), (d); 2134 (d). Pursuant to this authority, the AEC (NRC) has established by regulation maximum permissible releases of source, byproduct, and special nuclear materials into the environment by licensees. 10 CFR § 20.106; Table II. The regulations further provide that licensees should, in addition to complying with the established limits, "make every reasonable effort to maintain . . . releases of radioactive materials in effluents . . . as far below the limits . . . as practicable." 10 CFR § 20.1. Similarly, the regulations require that nuclear facilities be designed to keep levels of radioactive material in effluents "as low as practicable." 10 CFR § 50.34a, amended, 40 Fed. Reg. 19439 (May 5, 1975). See also 10 CFR §§ 50.36a, amended, 40 Fed. Reg. 19439 (May 5, 1975); § 50.57 (a)(3), (6).[5]

The FWPCA established a regulatory program to control and abate water pollution, stating as its ultimate objective the elimination of all discharges of "pollutants" into the navigable waters by 1985. In furtherance of this objective, the FWPCA calls for the achievement of effluent limitations that require ap-

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[5] The Fort St. Vrain Nuclear Generating Station is owned and operated by an NRC licensee, and is accordingly bound by the AEC (NRC) regulations. The Rocky Flats Plant is a federal facility operated for ERDA by a private contractor to fabricate plutonium into nuclear weapon parts. ERDA is also responsible for the operation of approximately 24 other facilities that discharge low levels of source, byproduct, and special nuclear materials. All of these facilities are required to conform to the same effluent standards established by the NRC for commercial facilities. Executive Order 11752, 3 CFR, p. 384 (1974).

plications of the "best practicable control technology currently available" by July 1, 1977, and the "best available technology economically achievable" by July 1, 1983. 33 U. S. C. § 1311 (b) (Supp. IV). These effluent limitations are enforced through a permit program. The discharge of "pollutants" into water is unlawful without a permit issued by the Administrator of the EPA or, if a State has developed a program that complies with the FWPCA, by the State.[6] 33 U. S. C. §§ 1311 (a), 1342 (Supp. IV).

The term "pollutant" is defined by the FWPCA to include, *inter alia*, "radioactive materials."[7] But when the Administrator of the EPA adopted regulations governing the permit program, 40 CFR, pt. 125, he specifically excluded source, byproduct, and special nuclear materials—those covered by the AEA—from the program upon his understanding of the relevant legislative history of the FWPCA:

> "The legislative history of the Act reflects that the term 'radioactive materials' as included within the

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[6] The permit program of Colorado, where this case originated, was approved by the EPA on April 8, 1975. 40 Fed. Reg. 16713.

[7] "The term 'pollutant' means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) 'sewage from vessels' within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources." 33 U. S. C. § 1362 (6) (Supp. IV).

> definition of 'pollutant' in section 502 of the Act covers only radioactive materials which are not encompassed in the definition of source, byproduct, or special nuclear materials as defined by the Atomic Energy Act of 1954, as amended, and regulated pursuant to the latter Act. Examples of radioactive materials not covered by the Atomic Energy Act and, therefore, included within the term 'pollutant' are radium and accelerator produced isotopes." 40 CFR § 125.1 (y) (citations omitted).[8]

It was the Administrator's exclusion of source, byproduct, and special nuclear materials from the permit program, and consequent refusal to regulate them, that precipitated the instant lawsuit. The question we are presented with, then, is whether source, byproduct, and special nuclear materials are "pollutants" within the meaning of the FWPCA.

III

The Court of Appeals resolved the question exclusively by reference to the language of the statute. It observed that the FWPCA defines "pollution" as "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water."

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[8] Respondents suggest that EPA's original interpretation of the term "radioactive materials" was to the contrary. They note that the initial public notice on the Fort St. Vrain permit application—published before the EPA regulations interpreting the Act to exclude coverage of AEA-regulated radioactive materials—contemplated the imposition of limitations on the discharge of "liquid radioactive wastes." Since we do not depend upon the EPA interpretation of the Act in reaching our conclusion, it is unnecessary to consider whether any alleged inconsistencies in EPA's position warrant our treating it with less deference than would otherwise be the case. See, *e. g., Train* v. *Natural Resources Defense Council, Inc.*, 421 U. S. 60, 87 (1975); *Udall* v. *Tallman*, 380 U. S. 1, 16–18 (1965).

33 U. S. C. § 1362 (19) (Supp. IV). And it noted that the reference to "radioactive materials" in the definition of pollutant was without express qualification or exception, despite the fact that the overall definition of "pollutant" does contain two explicit exceptions.[9] The Court concluded from this analysis of the language that by the reference to "radioactive materials" Congress meant *all* radioactive materials. The Court explained:

> "In our view, then, the statute is plain and unambiguous and should be given its obvious meaning. Such being the case, . . . we need not here concern ourselves with the legislative history of the 1972 Amendments. In this regard we would note parenthetically that in our view the legislative history of the 1972 Amendments is conflicting and inconclusive. Be that as it may, in the case before us there is no need to address ourselves to the ofttimes difficult task of ascertaining legislative intent through legislative history. Here, the legislative intent is clearly manifest in the language of the statute itself, and we need not resort to legislative history." —— F. 2d ——, —— (CA10 1974) (citations omitted).

To the extent that the Court of Appeals excluded reference to the legislative history of the FWPCA in discerning its meaning, the Court was in error. As we have noted before, "[w]hen aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" *United States* v. *American Trucking Assns.*, 310 U. S. 534, 543–544 (1940) (footnotes omitted). See *Cass* v. *United States*, 417 U. S. 72, 77–79 (1974). See generally Murphy, Old Maxims Never

[9] See n. 7, *supra*.

Die: The "Plain-Meaning Rule" and Statutory Interpretation in the "Modern" Federal Courts, 75 Colum. L. Rev. 1299 (1975). In this case, as we shall see, the legislative history sheds considerable light on the question before the Court.

Before turning to the various legislative materials, however, we pause to consider an additional argument asserted by respondents on the basis of the language of the statute. Section 1311 (f), they note, provides as follows:

> "Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters." 33 U. S. C. § 1311 (f).

Respondents suggest that it would be inconsistent for Congress in one section of the FWPCA to prohibit the discharge of "radiological warfare agents" and "high-level radioactive waste," both of which are subject to AEA regulation, while at the same time exempting AEA-regulated materials from the FWPCA's permit program. We see no inconsistency. That Congress has chosen to ban completely the discharge of certain high-level radioactive material regulated under the AEA does not, by itself, indicate whether Congress wanted the discharge of other radioactive material regulated under the AEA to be subject to the FWPCA's permit program. Respondents argue further, however, that Congress' use of the phrase "[n]otwithstanding any other provisions of this chapter" before the ban on the discharge of high-level radioactive waste suggests that the discharge of such material would otherwise be subject to the FWPCA's permit program. This argument is not entirely without logical appeal, but we do not consider it determinative. Like the more general argument based on the definition of a pollutant

as including "radioactive materials," this argument must be assessed against the background of the relevant legislative history.

IV

The legislative history of the FWPCA speaks with force to the question whether source, byproduct, and special nuclear materials are "pollutants" subject to the Act's permit program. The House Committee report was quite explicit on the subject:

> "The term 'pollutant' as defined in the bill includes 'radioactive materials.' *These materials are those not encompassed in the definition of source, byproduct, or special nuclear materials as defined by the Atomic Energy Act of 1954, as amended, and regulated pursuant to that Act. 'Radioactive materials' encompassed by this bill are those beyond the jurisdiction of the Atomic Energy Commission.* Examples of radioactive material not covered by the Atomic Energy Act, and, therefore, included within the term 'pollutant,' are radium and accelerator produced isotopes." H. R. Rep. No. 911, 92d Cong., 2d Sess., 131 (1972); 1 Leg. Hist. 818 (emphasis added).[10]

The definition of "pollutant" in the House version of the bill, H. R. 11896, 92d Cong., 2d Sess., § 502 (6) 1971, 1 Leg. Hist. 1068, contained the same broad reference to "radioactive materials" as did the definition in the Senate bill, S. 2770, 92d Cong., 1st Sess., § 502 (f) (1971), 2 Leg. Hist. 1697, and the bill ultimately enacted as the FWPCA; for our purposes the definitions are identical. Moreover, the House version of the bill con-

[10] Citations to "Leg. Hist." refer to a two-volume Committee Print entitled "A Legislative History of the Water Pollution Control Act Amendments of 1972," 93d Cong., 1st Sess. (1973).

tained the provision now codified as § 1311 (f), banning the discharge of radiological warfare agents and high-level radioactive waste "[n]otwithstanding any other provisions of this Act." H. R. 11896, 92d Cong., 2d Sess., § 301 (e) (1971), 1 Leg. Hist. 965. Thus, the House Committee, describing the import of the precise statutory language with which we are concerned, cautioned that the definition of pollutant did not include those radioactive materials subject to regulation under the AEA.

Respondents claim to find in the Senate Committee Report an indication that the statutory definition of pollutant embraces radioactive materials subject to AEA regulation. Section 306 of the Senate bill, which corresponds to 33 U. S. C. § 1316 (Supp. IV), required that the EPA Administrator establish "standards of performance" with respect to the discharge of pollutants from specified categories of sources, to be revised from time to time by the Administrator. The Senate Committee Report noted that nuclear fuels processing plants were not included, because the EPA did not then have "the technical capability to establish controls for such plants." S. Rep. No. 414, 92d Cong., 1st Sess., 59 (1971); 2 Leg. Hist. 1477. The Report then observed that the Committee "expects that EPA will develop the capability," and continued:

> "The Bureau of Radiological Health, which was transferred to the Environmental Protection Agency, should have the capacity to determine those levels of control which can be achieved for nuclear fuels processing plants. If they do not, such a capability should be developed and this particular source should be added to the list of new sources as soon as possible." *Ibid.*

Petitioners assert that this statement by the Commit-

tee has no bearing on the question before the Court. The statement, petitioners suggest, reflects no more then a recognition, shared by them, that the plants referred to were not intended to be wholly excluded from the reach of the FWPCA—a recognition that in their view means that the EPA can control the discharge from such plants of polluting materials other than source, by-product, and special nuclear materials. In short, petitioners contend that the statement sheds no light on the question whether source, byproduct, and special nuclear materials are pollutants under the FWPCA.

We agree with the petitioners that the Senate Committee statement is addressed to the inclusion of nuclear fuels processing plants in the category of sources subject to the EPA's control, not to the inclusion of any particular materials within the definition of "pollutant." It is true that the reference to the development of control levels by the Bureau of Radiological Health [11] does permit the inference that the Committee was contemplating controls over the discharge of AEA-regulated radioactive materials. Still, we are not prepared to attribute greater significance to this inference than to the more explicit statement contained in the House Committee Report, a statement that, as we shall see, is amply supported by the discussion on the floors of the House and the Senate.

C

A colloquy on the Senate floor between Senator Pastore, the Chairman of the Joint Committee on Atomic Energy, and Senator Muskie, the FWPCA's primary author, provides a strong indication that Congress did

[11] The Bureau of Radiological Health was transferred to the EPA from the Department of Health, Education, and Welfare pursuant to § 2 (a) (3) (ii) (c) of Reorganization Plan No. 3 of 1970, which established the EPA. 84 Stat. 2086, 5 U. S. C. App., p. 610.

not intend the FWPCA to alter the AEC's control over the discharge of source, byproduct, and special nuclear materials. Senator Pastore, referring to the need to define what materials are "subject to control requirements" under the FWPCA, noted that the definition of "pollutant" included the words "radioactive materials." 2 Leg. Hist. 1265. The following exchange then took place:

> "MR. PASTORE. . . .
>
> "My question is this: Does this measure that has been reported by the committee in any way affect the existing law, that is, the existing Atomic Energy Act of 1954, insofar as the regulatory powers of the AEC are concerned with reference to radioactive material?
>
> "MR. MUSKIE. It does not; and it is not the intent of this act to affect the 1954 legislation.
>
> "MR. PASTORE. In other words, this bill does not change that feature of the Atomic Energy Act in any regard?
>
> "MR. MUSKIE. That is correct.
>
> "MR. PASTORE. I thank the Senator.
>
> "MR. MUSKIE. May I say in addition, that legislation dealing with the setting of effluent limitations as they involve nuclear powerplants is now pending in the courts. The Senator is aware of that litigation.
>
> "For example, a recent decision of the U. S. Court of Appeals for the Eighth Circuit, in the case of Northern States Power and Light versus Minnesota, raises the issue. I would like to point out that the committee considered speaking specifically to that decision, but chose to remain silent so as not to prejudice the decision or any appeal from it.
>
> "MR. PASTORE. Yes. As a matter of fact, that

decision held that the Federal Government did pre-empt in this field under existing law. That is the opinion, and we hope this legislation does not change that opinion in any way, and does not affect existing law. That is all I am concerned with.

"MR. MUSKIE. The Senator is correct in his evaluation of the legislation on that point." *Id.*, at 1265–1266.

Respondents contend that this colloquy "merely reiterates that the FWPCA does not alter the regulatory authority of the AEC" over source, byproduct, and special nuclear materials. Brief for the Respondents, at 40–41. The exchange, they assert, says nothing about the EPA's authority to regulate the same materials. The discussion is consistent, they claim, with their position that the AEC must defer to the EPA in the setting of effluent limitations for AEA-regulated materials—that, for example, NRC licenses must conform to permits issued under the FWPCA. We disagree.

The thrust of Senator Muskie's assurances that the FWPCA would not "in any way affect" the regulatory powers of the AEC was, we think, that the AEC was to retain full authority to regulate the materials covered by the Atomic Energy Act, unaltered by the exercise of regulatory authority by any agency under the FWPCA. This conclusion is reinforced by Senator Muskie's reference to the case of *Northern States Power Co.* v. *Minnesota*, 447 F. 2d 1143 (CA8 1971). In that case, which was subsequently affirmed summarily by this Court, 405 U. S. 1035 (1972), the Eighth Circuit had held that the Atomic Energy Act created a pervasive regulatory scheme, vesting exclusive authority to regulate the discharge of radioactive effluents from nuclear power plants in the AEC, and pre-empting the States from regulating such discharges. The absence of any room for a state

role under the Atomic Energy Act in setting limits on radioactive discharges from nuclear power plants [12] stands in sharp contrast to the scheme created by the FWPCA, which envisions the development of state permit programs, 33 U. S. C. § 1342 (b), (c) (Supp. IV), and allows the States to adopt effluent limitations more stringent than those required or established under the FWPCA. 33 U. S. C. § 1370 (Supp. IV). See also 33 U. S. C. §§ 1311 (b)(1)(C), 1314 (b), 1316 (c), 1341 (a)(1) (Supp. IV).[13] Senator Muskie's specific assurance to Senator Pastore that the FWPCA would not affect existing law as interpreted in *Northern States* can only be viewed, we think, as an indication that the exclusive regulatory scheme created by the Atomic

---

[12] The Atomic Energy Act, as amended in 1959, 73 Stat. 688, 42 U. S. C. § 2021, does permit the States to assume, pursuant to agreements with the AEC, a limited role in regulating source and byproduct materials, and special nuclear materials in quantities not sufficient to form a critical mass. But state regulatory programs must be compatible wth the AEC's regulatory program, § 2021 (d)(2), and States are precluded from playing any role in several significant areas of regulation—including the setting of limitations on radioactive discharges from nuclear power plants. § 2021 (c)(1); *Northern States Power Co.* v. *Minnesota*, 447 F. 2d, at 1149 n. 6.

[13] Section 101 (b) of the FWPCA, 33 U. S. C. § 1251 (b) (Supp. IV), provides generally:

"It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution."

Energy Act for source, byproduct, and special nuclear materials was to remain unaltered.[14]

In the course of the House's consideration of the FWPCA, an unsuccessful attempt was made to alter the Atomic Energy Act's scheme for regulating the discharge of the radioactive materials involved in this case. Representative Wolff proposed to amend what is now 33 U. S. C. § 1370 (Supp. IV), which gives States the authority to set more stringent limits on the discharge of pollutants, by adding a paragraph giving the States the authority to regulate the discharge of radioactive wastes from nuclear power plants. The debate on that amendment and its defeat by a 3-to-1 vote provide solid support for the conclusion that the FWPCA's grant of regulatory authority to EPA and the States did not encompass the control of AEA-regulated materials.

The Wolff amendment, according to its author, would "give the states a voice in deciding what kinds and

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[14] Respondents contend that a discussion between Senator Buckley and Senator Muskie on the Senate floor is indicative of an intent to permit EPA to regulate the discharge of AEA-regulated radioactive materials. Senator Buckley expressed concern about § 511 (c)(2)(B) of the Act, 33 U. S. C. § 1371 (c)(2)(B) (Supp. IV), which precludes agencies other than EPA from "impos[ing], as a condition precedent to the issuance of any license or permit, any effluent limitation other than such limitation established pursuant to this Act." Referring to recent action by the AEC to control thermal pollution of the Hudson River, Senator Buckley asked Senator Muskie whether § 511 (c)(2)(B) would bar AEC decisions "of this type" setting tougher limitations than those prescribed by the EPA. Senator Muskie's response was that the AEC would be required to abide by EPA effluent limitation controls "with respect to the subject matter which the Senator has raised." 1 Leg. Hist. 198. The subject matter raised was thermal pollution, and we do not interpret Senator Muskie's response as suggesting that a similar conclusion would be reached with respect to pollution by AEA-regulated radioactive materials.

amounts of such radioactive wastes may be discharged into their waters." 1 Leg. Hist. 544. In explaining the need for such an amendment, Representative Wolff noted that the time had come "to seriously consider standards more stringent than those promulgated by the AEC." *Id.*, at 545. Representative Frenzel, a co-sponsor of the amendment, pictured it as an attempt to alter the result in the *Northern States* case. The AEC, he explained, could not be expected to protect the health and safety of the public as effectively as the States, because "the AEC has a dual mission—that of promotion as well as safety." *Id.*, at 548.[15]

The opponents of the Wolff Amendment voiced strong opposition to the transfer of the AEC's regulatory authority to the States *or* to the EPA. Representative Stanton, a Member of the House Committee on Public Works, which reported the House bill, stated:

> "The amendment presents the House with a very complex and difficult proposition. It proposes to take authority for the setting of pollution control standards from the AEC and places it in the hands of EPA. For normal operations involving pollution, that control properly belongs under EPA. But atomic energy is a peculiar field. To date, the operation of the atomic energy program has been under the control of the Commission itself. Eventually, such control will be delegated to the States as more and more knowledgeable people at the State level become involved in the atomic energy program. That time, however, has not yet arrived. Until we reach that stage it is obvious that the control of which we speak should remain with the Atomic Energy Commission itself, as the committee points out on

[15] See also 1 Leg. Hist. 552 (remarks of Rep. Hungate); 555 (remarks of Rep. McClory).

page 131 of House Report 92–911 [quoted at p. 9, *supra*], which accompanies this bill. For this reason, I would oppose the amendment offered by my distinguished colleague." 1 Leg. Hist. 554–555.

Representative Price, Vice-Chairman of the Joint Committee on Atomic Energy, argued against the amendment as follows:

"The bill as reported establishes a program of effluent limitations and standards, and section 510 clearly provides that the States may set more restrictive standards should they so desire. The proposed amendment is aimed at two so-called pollutants—radioactive materials and thermal discharges—and seeks to collaterally amend any statute enacted by the Congress relative to them without any specific reference to the statutes that might be affected. As to radioactive materials, the target of the amendment is obvious. It seeks to reverse the decisions of the courts which have held that the Atomic Energy Act of 1954 preempted to the Federal Government, acting through the Atomic Energy Commission, the exclusive jurisdiction to regulate most radioactive materials. Clearly, if such is the will of the House, it should be undertaken only after a thorough examination of the impact of such a decision and it should be done directly by amending the statute involved—the Atomic Energy Act—not collaterally through this legislation. If this amendment had been proposed as a piece of original legislation, it would have been referred to the appropriate committee for hearings and evaluation of all the pertinent factors involved in such a decision. I could go on with the explanation of those factors, but this is not the time nor the place for such a consideration in the first instance. This bill is not

> the appropriate vehicle for amending a major piece of legislation, thoroughly considered in committee and by the Congress, which established at the direction of the Congress a thorough and pervasive regulatory program relative to radioactive materials." *Id.*, at 556.

Representative McCormack, a Member of the House Committee on Public Works and Chairman of the House Science and Astronautics Committee's Task Force on Energy Research and Development, urged the amendment's defeat in similar terms. After noting the inadvisability of "throwing away" the AEC's "meticulous work" in the area of safety in favor of state regulation, *id.*, at 550, he concluded:

> "[I]t is obvious from the report by the House Committee on Public Works for this bill, and from the committee report from the other body that this bill does not impact directly upon the Atomic Energy Act of 1954. This bill applies only to radioactive materials not covered by the Atomic Energy Act of 1954 and, as such, the amendment is not relevant to this bill at all." *Id.*, at 551.[16]

Respondents urge that the Wolff amendment was addressed only to the question of the States' regulatory authority, and that its defeat did not reflect any intent to foreclose regulation of source, byproduct, and special nuclear materials by the EPA. We do not agree that the House's consideration of the Wolff amendment leaves room for EPA regulation. Several of the opponents of the amendment were quite explicit in their reliance upon the House Committee Report's statement that

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[16] See also 1 Leg. Hist. 546–547 (remarks of Rep. Holifield); 553 (remarks of Rep. Hosmer); 553 (remarks of Rep. Clausen); 557 (remarks of Rep. Harsha).

radioactive materials subject to AEA regulation were excluded from the coverage of the FWPCA.[17] Neither Representative Wolff nor Representative Frenzel took issue with that interpretation in the course of the debate on their amendment,[18] and indeed it is arguable that their amendment was premised on the assumption that source, byproduct, and special nuclear materials were wholly beyond the scope of the FWPCA. If these materials were covered by the Act—that is, if they were "pollutants"—the amendment was wholly superfluous, for the *unamended* provision that is now 33 U. S. C. § 1370 would permit the States to regulate their discharge. But regardless of the underlying assumptions of the sponsors of the Wolff amendment, the interpretation respondents would place upon its defeat is unacceptable. As respondents would have it, the House expressed an intent to permit EPA regulation of the materials in question, but preclude state regulation of

[17] In addition to the comments of Representatives Stanton and McCormack, quoted above, see 1 Leg. Hist. 587–588 (remarks of Reps. Holifield, Jones, Harsha and Hosmer).

[18] The statements of Representatives Wolff and Frenzel referred to above suggest that they recognized the absence of any role for the EPA in regulating the materials in question. In explaining the need to vest regulatory power in the States, they both referred to the inadequacy of regulation by the AEC, without any mention of the prospect of regulation by the EPA.

It should not escape mention that one supporter of the Wolff amendment, Representative McClory, urged its adoption "in order to make eminently clear that we are controlling nuclear . . . pollution in this bill." 1 Leg. Hist. 555. To the extent that this statement suggested that the amendment merely clarified what the House bill already provided, it is a far less persuasive indicator of legislative intent than the contrary statements by the successful opponents of the amendment. Similarly, Representative Frenzel's statement the day after the Wolff amendment was defeated that the Act applied to AEA-regulated radioactive materials, 1 Leg. Hist. 745–746, is not entitled to great weight.

the same materials under the FWPCA. That result could find no basis in the language of the Act. In our view, then, the House's consideration and rejection of the Wolff amendment offers additional support for the interpretation stated in the House Committee Report that source, byproduct, and special nuclear materials are beyond the reach of the FWPCA.

The House's rather explicit statement of intent to exclude AEA-regulated materials from the FWPCA was unchallenged by the Conference Committee, which simply retained the same reference to "radioactive materials" contained in both the House and Senate bills. S. Rep. No. 1236, 92d Cong., 2d Sess., 143 (1972); 1 Leg. Hist. 326. Representative Harsha, a ranking Member of the Conference Committee, explained the import of the Conference Committee action as follows:

> "The conference report does not change the original intent as it was made clear in the colloquy between Senators Muskie and Pastore in the course of the debate in the other body. I also note that an amendment to H. R. 11896 was offered on March 28, 1972, which would have overturned the Northern States Power against Minnesota case.
>
> "The distinguished gentleman from California (Mr. Holifield) spoke in opposition to the amendment and pointed out the necessity of not changing the careful division of authority between the States and the Federal Government over nuclear materials and facilities as enunciated in the Northern States case. The amendment was defeated by a 3-to-1 vote of the House.
>
> "I can say to the gentleman from Illinois that the managers in no way detracted from the intent of the language in H. R. 11896. I also note that the Committee on Public Works in its report on H. R.

> 11896 states on page 131 that the term 'pollutant' as defined in the bill includes 'radioactive materials.' These materials are not those encompassed in the definition of source, byproduct, or special nuclear materials as defined by the Atomic Energy Act of 1954, as amended, and regulated pursuant to that act. 'Radioactive materials' encompassed by this bill are those beyond the jurisdiction of the Atomic Energy Commission. Examples of radioactive materials not covered by the Atomic Energy Act, and, therefore, included within the term 'pollutant' are radium and accelerator produced isotopes. This language adequately reflects the intent of the managers of the conference report." 1 Leg. Hist. 226–227. See also 1 Leg. Hist. 229 (remarks of Rep. Jones).

With no one expressing a different view of the Conference action, the House proceeded to agree to the Conference Report. 1 Leg. Hist. 276.[19]

V

If it was not clear at the outset, we think it abundantly clear after a review of the legislative materials that reliance on the "plain meaning" of the words "radioactive materials" contained in the definition of "pollutant" in the FWPCA contributes little to our understanding of whether Congress intended the Act to encompass the regulation of source, byproduct, and special nuclear materials. To have included these materials under the FWPCA would have marked a significant alteration of

[19] We also note that in the course of its consideration of the Energy Reorganization Act of 1974, 88 Stat. 1233, which created the NRC and ERDA, the House rejected an amendment that would have transferred from those agencies to the EPA the authority to set emission standards for source, byproduct, and special nuclear materials. 119 Cong. Rec. 42615–42616 (1973).

the pervasive regulatory scheme embodied in the Atomic Energy Act of 1954. Far from containing the clear indication of legislative intent that we might expect before recognizing such a change in policy, cf. *United States* v. *United Continental Tuna Corp.*, —— U. S. ——, ——–—— (slip op., at 4–5) (Mar. 30, 1976), the legislative history reflects, on balance, an intention to preserve the pre-existing regulatory plan.[20]

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[20] It does not follow, however, that EPA has no role to play in protecting the environment from excessive radiation attributable to AEA-regulated materials. The EPA was established by Reorganization Plan No. 3 of 1970, 84 Stat. 2086, 5 U. S. C. App., p. 609. Among the functions transferred to the EPA under that plan were:

"[t]he functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended, . . . [that] consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material. As used herein, standards mean limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material." § 2 (a) (6), 84 Stat. 2088, 5 U. S. C. App., p. 610.

In his message accompanying the reorganization plan, President Nixon emphasized that the AEC was to "retain responsibility for the implementation and enforcement of radiation standards through its licensing authority." 5 U. S. C. App., p. 612. Petitioners' brief, expressing the views of EPA, NRC and ERDA, explains the resultant division of authority as follows:

"EPA was to set generally applicable radiation standards, limiting the total amount of permissible radiation in the environment from major categories of sources, while the AEC was to prescribe the limitations applicable to discharges of licensed materials from particular sources which contribute to the total." Brief for the Petitioners, at 52–53 (citations omitted).

See AEC–EPA Memoranda of Understanding, 38 Fed. Reg. 24936 (Sept. 11, 1973), 38 Fed. Reg. 32965 (Nov. 29, 1973). See also EPA Proposed Standards for Environmental Radiation Protection for Nuclear Power Operations, 40 Fed. Reg. 23419 (May 29, 1975).

We conclude, therefore, that the "pollutants" subject to regulation under the FWPCA do not include source, byproduct, and special nuclear materials, and that the EPA Administrator has acted in accordance with his statutory mandate in declining to regulate the discharge of such materials. The judgment of the Court of Appeals is

Reversed.

MR. JUSTICE STEVENS took no part in the consideration or decision of this case.

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

July 14, 1976

Honorable Philip Buchen
Counsel to the President
The White House

Dear Phil,

Enclosed per our discussion is an article concerning Congressman Anderson's recent statement on reprocessing and nonproliferation issues.

Best regards.

Sincerely,

James A. Wilderotter
General Counsel

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NUCLEAR EXPORTS: THE DEEPENING DILEMMA

GOP's John Anderson Speaks Out Against White House Inaction

The Ford Administration's policy on nuclear exports has suffered a severe blow with the defection of Rep. John Anderson of Illinois, one of the leading Republi-

THE WHITE HOUSE

WASHINGTON

DECISION

note from Wilderotter

MEMORANDUM FOR: THE PRESIDENT

FROM: BRENT SCOWCROFT
JIM CANNON
JIM LYNN

SUBJECT: NUCLEAR POLICY - ISSUES AND PROBLEMS REQUIRING ATTENTION AND POTENTIAL POLICY STATEMENT

This memorandum:

- Identifies nuclear export and weapons proliferation, reprocessing and waste management problems requiring early attention.

- Summarizes growing Congressional, public and media concern about these problems, including restrictive legislation now moving through the Congress, criticism of the Administration and the potential for more of both in the months ahead.

- Suggests the need for a major effort over the next six weeks to develop and evaluate several potential policy and program actions, followed by a Presidential statement on nuclear policy by mid-September.

ISSUES

The principal issues presented for your consideration are:

- Whether you wish to direct that the necessary effort be undertaken over the next six weeks to develop and evaluate proposals and present them for your consideration;

- Whether you wish to approve, tentatively, the concept of a major nuclear policy statement in September; and

- If so, where to assign responsibility for assuring that all necessary work is carried out and issues and a draft statement are presented for your consideration.

BACKGROUND AND STATUS - NUCLEAR POLICY

The acceptability of commercial nuclear power passed a major test with the defeat of Proposition 15 in California. Also, we expect that your uranium enrichment proposal will soon be approved by the Congress; paving the way for expansion of capacity and thus resolving the principal remaining uncertainty at the "front end" of the commercial nuclear power cycle. Some questions continue to be raised about the adequacy of uranium supply, mining and milling capacity and nuclear safety, but these appear to be manageable problems -- with primary responsibility in industry and the Nuclear Regulatory Commission (NRC). However, these front-end problems are aggravated by the uncertainties associated with nuclear fuel reprocessing and waste handling and storage as described below. The development of advanced nuclear technologies (e.g., breeder) is adequately funded in your budget proposals.

However, several major interrelated nuclear power and proliferation issues are now facing us and these are drawing increased attention in the Congress, public and media. These involve:

- U.S. policy on nuclear exports and safeguards to reduce the potential for weapons proliferation.

- U.S. policy with respect to reprocessing of spent fuel from commercial power plants to recover plutonium and unused uranium, and the commercial demonstration of technology.

- The adequacy of U.S. plans for the safe handling and storage of nuclear wastes, particularly assurances that repositories will be available for long-term storage of long-lived and high-level wastes.

The potential solutions for these problems are intertwined; e.g., we cannot resolve policy on reprocessing by other nations until we know how we are going to handle the problem in the U.S. The issues involve both domestic and national security considerations and they affect both the continued acceptability of nuclear power in the U.S. and our position as a major free-world supplier of nuclear equipment and fuel for peaceful purposes. Maintaining our strong position as a free-world supplier is one of our best means of controlling proliferation.

PUBLIC, PRESS AND CONGRESSIONAL ACTIONS AND OUTLOOK

While the California Proposition failed, other referenda involving restrictions on commercial nuclear power have qualified for November ballots in Washington, Oregon, and Colorado. These referenda together with three restrictive laws passed in California prior to the moratorium vote, will keep attention focused on unresolved reprocessing, waste management and proliferation issues.

Concern about proliferation has lead to a number of restrictive provisions in bills now moving through the Congress -- most of which require additional Congressional review of nuclear exports. These requirements will introduce more uncertainty and delay, give potential foreign customers new doubts about the reliability of the U.S. as a supplier of nuclear equipment and materials, and thus hamper U.S. efforts to impose rigid safeguards against proliferation.

Congressional developments, including recent strong criticism from Congressman John Anderson is summarized at Tab A.

The number of press articles is increasing and the tone is growing more critical. Press attention focused particularly on the recent actions by the NRC on export licenses involving Spain and India. (The role and activities of the NRC is also summarized at Tab A.)

NATURE OF THE EFFORT NEEDED

ERDA Administrator Seamans has recommended (letter at Tab B) undertaking a major program to provide nuclear fuel reprocessing in the U.S., permitting foreign participation in this activity, and using this program as the centerpiece of a major Presidential statement on non-proliferation.

We agree that actions on reprocessing should be considered but we believe that a more comprehensive approach should be taken when developing proposals and a draft statement for your consideration. The paper at Tab C outlines in more detail the scope of the problems requiring consideration and identifies a number of possible actions, all of which require further development and evaluation before they are presented to you for consideration. We also believe that an effort should be undertaken immediately, particularly in view of the growing concern in the Congress.

In view of the complex nature of the issues involved, a number of agencies will need to be involved and will need to devote resources to the effort. These include: ERDA, State, ACDA, NRC and, to a lesser extent, Interior, EPA, Commerce, FEA and CEQ.

RECOMMENDATIONS

1. That you direct that work begin immediately to develop and evaluate the potential initiatives described briefly in Tab C (and others subsequently identified), with decision papers presented to you by August 30.

APPROVE_____ DISAPPROVE_____

2. That you tentatively decide to issue a major statement on nuclear policy or send a message to Congress in mid-September.

APPROVE_____ DISAPPROVE_____

3. That you assign responsibility jointly to us (Brent Scowcroft, Jim Cannon, and Jim Lynn) to develop and carry out a plan to accomplish the necessary work in cooperation with all the agencies concerned.

APPROVE_____ DISAPPROVE_____

A

PRINCIPAL CONGRESSIONAL AND NUCLEAR REGULATORY COMMISSIONS (NRC) ACTIONS RELATING TO NUCLEAR EXPORTS AND REPROCESSING

I. CONGRESSIONAL. Principal Congressional actions -- including legislation passed and pending and a sampling of recent criticism -- are as follows:

A. A 1974 law requires all bilateral "agreements for cooperation" involving significant nuclear exports be submitted to Congress for a 60-day period of review. This was stimulated by concern over Israeli and Egyptian nuclear accords.

B. The Military Aid Bill includes a prohibition (the Symington Amendment) against military assistance to countries which furnish or receive nuclear reprocessing or enrichment facilities not under multinational control or IAEA safeguards. Restrictions could be waived by the President in individual cases upon specific findings -- subject to disapproval by a joint resolution of the Congress within 30 days.

C. The ERDA 1977 Authorization bill includes an amendment (still subject to final wording in conference after July recess) requiring Congressional approval of the first exports of nuclear fuel or equipment to any country that has not signed the NPT or is not covered by a Congressionally-approved agreement for cooperation.

D. The House International Relations Committee is expected to report an amendment to the Export Administration Act which would require prohibitions against reprocessing of fuel exported by U.S. or burned in U.S.-supplied reactors, unless the Secretary of State certifies that there would be at least a 90-day warning before material could be used in a nuclear device.

E. The Senate Government Operations Committee reported a bill (S. 1439) on May 14 sponsored by Senators Glenn, Ribicoff and Percy, which (a) shifts additional executive branch nuclear export responsibility to State Department and the independent Nuclear Regulatory Commission from ERDA and Commerce

Department and (b) makes the Congress the referee in disputes between State and NRC over the granting of export licenses. This bill was referred to the JCAE and Foreign Relations for 60 days, which period has now been extended through the end of August. Several Administration witnesses have testified against the bill and Secretary Kissinger was expected to testify on June 29 but his testimony has been delayed. The JCAE is pressing the Administration for alternative proposals.

F. On June 25, Congressman John Anderson publicly blasted "the White House" for not moving fast enough to resolve problems relating to reprocessing, nuclear exports and proliferation. (This occurred despite our attempts to keep his staff thoroughly informed of Administration efforts.)

G. Congressman Anderson has since written to JCAE Chairman Pastore urging extensive hearings over the next two months -- with the objective of pressing the Administration for answers on reprocessing, nuclear exports and proliferation issues. (We have been advised informally by Anderson's staff that he probably would agree to urge Senator Pastore to delay hearings if the Administration plans to come forward with new proposals.)

H. Senator Ribicoff has been a persistent critic for the past two years of what he believes is inadequate executive branch action on reprocessing, nuclear exports and proliferation. Over the past four weeks he has been pressing particularly hard with respect to U.S.-supplied materials (heavy water) in the Indian reactor used to produce material for the device exploded by India in 1974. He will almost certainly use the State Department responses to press his case even more.

II. NUCLEAR REGULATORY COMMISSION. The NRC now plays a major role in nuclear exports and will decide whether, when, and under what conditions reprocessing will be permitted in the U.S. The NRC role has become particularly important because:

A. Inadvertently, the final responsibility for approving nuclear exports was allowed to be vested in the independent NRC rather than the executive branch. This resulted from the September 1974 law which created ERDA and NRC.

B. The NRC has just announced decisions on licenses to export a reactor to Spain and an interim supply of fuel for the Tarapur reactor in India. The NRC decisions, including the strong dissent of one Commissioner have been made public. There appears to be agreement within the NRC that additional controls are needed but there is sharp dispute as to whether additional controls -- beyond those in existing agreements -- should now be imposed as a condition of licenses issued under existing agreements. The view of the dissenting Commissioner is getting support in the press and from some members of Congress.

C. The NRC is now working on an environmental impact statement necessary to its decision -- expected in early 1977 -- as to whether to permit wide scale use of plutonium as reactor fuel. This and subsequent decisions on the licensing of reprocessing facilities will have a major impact on the desirability, feasibility and economics of nuclear fuel reprocessing. (The decision will also have an impact on the viability of the liquid metal fast breeder reactor (LMFBR) which would be fueled with plutonium and which is a major factor in the economic justification for reprocessing of spent fuel elements to recover plutonium and unused uranium.)

B

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

June 9, 1976

The President
The White House

Dear Mr. President:

I believe there is an opportunity and a need for the United States to take a major initiative to resolve uncertainties that now exist in the nuclear fuel cycle and to reduce the risk of international proliferation of special nuclear materials. This opportunity, if successfully pursued, would complete your evolving nuclear policy and could be the central feature of a major Presidential Message.

Background:

Until recently, Federal nuclear policy: (1) stressed Government funding of enrichment plants; (2) assumed that reprocessing of spent nuclear fuel and recycling of plutonium and uranium would be accomplished in the private sector without Government support; and (3) placed less stress on safeguards against theft or diversion of nuclear material than now seems wise.

Your initiatives in the past two years have substantially reformed this policy. Specifically you have:

- Limited the Federal role in enrichment by supporting private entry as the best means for assuring additional enrichment capacity;
- Increased Government research in reprocessing and recycling so that safe and secure private facilities could be demonstrated;
- Sponsored a major Government program to demonstrate the safe management and disposal of nuclear waste; and
- Increased stress on materials and physical safeguards at both Government-owned and private facilities licensed by the Nuclear Regulatory Commission.

These measures will greatly strengthen the nuclear fuel cycle and our controls over the handling and utilization of plutonium in this country. Yet, despite substantial progress, a final and crucial issue remains unresolved -- the need to control carefully the world's supply of plutonium. Among the factors bearing on this issue are:

- A recent court decision most likely will prevent the Nuclear Regulatory Commission from licensing private reprocessing facilities that would produce plutonium for recycled use until approval of the generic environmental statement on mixed oxide fuels, probably years from now.

- Uncertainty is growing among other nations about the United States as a reliable supplier of reactors and fuel because of (1) final decisions on export licenses now rest with the Nuclear Regulatory Commission; and (2) recent amendments to nuclear legislation indicating firm Congressional intent to review individual nuclear initiatives with the private sector.

- Other supplier nations are developing national reprocessing and recycling capabilities, and some are under pressure commercially to sell plants to other countries desiring to build an integrated indigenous nuclear power capability, for example, Iran and Brazil. This trend could multiply the chances of theft or diversion of plutonium and could lead to a dramatic increase in the number of nations with nuclear weapons.

- Multinational regional reprocessing centers have been suggested as a means for minimizing this proliferation. However, the technical, logistical and political feasibility of the idea has yet to be demonstrated.

Recommendation:

I believe the time is at hand for the United States to address this basic issue with a major initiative. Such an initiative might have the following features:

- An offer to supplier and consumer states to join with the United States to demonstrate the viability of a multinational reprocessing approach using the United States as the demonstration site. The question of excess plutonium and disposal of nuclear waste resulting from the reprocessing requires further exploration to optimize the attractiveness to both the host and participating nations.

- A call upon supplier nations to suspend temporarily the export of reprocessing technology until the multinational centers or other effective controls have been agreed to. I have already suggested this to the Secretary of State in a letter dated May 13, 1976.

- A commitment to employ in the multinational centers and to make available advanced United States safeguards and security technology.

The key to the initiative is a willingness of the United States to offer reprocessing and recycling services to other nations and to open our facilities to international inspection. The facility could well be a new plant or a partially completed private plant at Barnwell, South Carolina that was financed by a consortium composed of Allied Chemical, Gulf Oil Corporation and Royal Dutch Shell. Arrangements for serving foreign needs from this facility would, of course, have to be worked out, however, it is anticipated that the consortium will have an interest in a governmentally-encouraged demonstration.

In any event, the United States could provide some funding and appropriate technical assistance and guarantees for the establishment of an international reprocessing facility in the United States and invite those nations which would utilize the services of such a facility to provide a pro rata share of operating expenses. Of course, a successful international demonstration, under the auspices of the United States, would also materially assist in the development of our domestic reprocessing capability over the long run as increasing nuclear power production results in needed new reprocessing facilities.

Such an initiative could become the centerpiece of a truly comprehensive Presidential policy on nuclear power and non-proliferation.

Decision:

If you approve, I will pursue and intensify work with appropriate departments and agencies to develop a recommended nuclear reprocessing initiative to be available to you as soon as possible.

Respectfully yours,

R. C. Seamans

Robert C. Seamans, Jr.
Administrator

cc: Elliott Richardson

SUMMARY OF PRINCIPAL NUCLEAR POWER PROBLEMS AND POSSIBLE RESPONSES: NUCLEAR EXPORTS, REPROCESSING AND WASTE MANAGEMENT

SUMMARY OF PRINCIPAL NUCLEAR PROBLEMS AND POSSIBLE RESPONSES: NUCLEAR EXPORTS AND PROLIFERATION, REPROCESSING AND WASTE MANAGEMENT

I. NUCLEAR EXPORTS AND PROLIFERATION

A. Current Problems

1. Growing Congressional, press, and public concern about nuclear weapons proliferation.

   Concern is focused primarily upon the greater availability of plutonium which is extracted from "spent" fuel elements (i.e., the process referred to as "reprocessing"). Once separated plutonium is available, very little time -- hours to days -- is needed to make a nuclear weapon. Concern has continued to grow since India exploded a nuclear device in 1974.

2. Growing concern that current U.S. activities to safeguard against diversion of plutonium for weapons purposes is not adequate.

   Attention is now focused on exports of nuclear materials and equipment. Some feel that existing controls (detailed below) have been barely adequate for safeguarding reactors and are simply not adequate to guard against diversion of separated plutonium, particularly if it is accumulated in excess amounts.

3. The U.S. position in the foreign market for nuclear equipment and materials is weakening.

   This is resulting from (a) the lack of uranium enrichment capacity, (b) growing strength of foreign competition for nuclear equipment and fuels, (c) uncertainty as to U.S. policy on nuclear exports due to our divisive internal debate, and (d) potentially, delays resulting from Nuclear Regulatory Commission (NRC) control of export licenses and growing Congressional review requirements. As the U.S. loses foreign orders to other suppliers, the U.S. also loses its leverage to obtain rigid safeguards agreements.

4. Perception in the media that the Administration is complacent about potential diversion of plutonium from commercial nuclear power plants abroad.

Overall, our controls generally are more rigorous than those applied by most other suppliers, but this has not helped in the current debate. Also, Canada's recent action in cutting off nuclear relationships with India and imposing strong safeguard controls in connection with its exports has set a tough standard of comparison.

B. Principal Existing Measures Affecting Export Policy and the Control of Proliferation.

1. NPT

Approximately 100 nations have signed the Non-Proliferation Treaty (NPT) foreswearing activities leading to the proliferation of weapons. Several important nations have not signed, including France, India, Pakistan, Israel, South Africa and Brazil.

2. Bilateral "Agreements for Cooperation" between the U.S. and about 30 other nations importing nuclear equipment and materials from the U.S.

These agreements specify safeguards that are to be maintained.

3. IAEA

International Atomic Energy Agency establishes safeguards standards and has some inspection capability.

4. Supplier Discussions

State Department is leading negotiations with other supplier nations, seeking agreement to impose more rigid safeguards. There has been some success achieved, but no agreement to defer the export of reprocessing facilities until more effective controls are developed.

5. New International Convention

The U.S. is exploring a new international nuclear physical security convention and other steps to upgrade physical security standards worldwide.

6. Pressure on Customer Nations

The U.S. brought pressure on the Government of South Korea to cancel its order with the French for a reprocessing plant and is applying similar pressure on Pakistan to forego acquisition of a reprocessing plant, but with less success.

Congressional and press criticism of export policies of West Germany and France continues strong even though both countries claim they are conforming to guidelines recently developed jointly by supplier nations. Germany still has a commitment to supply enrichment and reprocessing technology to Brazil and France is committed to supply a reprocessing plant to Pakistan. Nature of commitments to others, such as South Africa, are unclear.

C. Administration Response Thus Far

The Executive Branch has responded to the above in several ways, but the actions (a) have been piecemeal and largely defensive, and (b) appear inadequate in the face of current Congressional and public attitudes. Responses include:

1. Secretary Kissinger summarized U.S. nonproliferation efforts in testimony in opposition to the Glenn-Percy Nuclear Export Reorganization Bill (S. 1439) before the Senate Government Operations Committee. ERDA, ACDA, and other Administration witnesses gave supporting testimony. Administration witnesses have also testified before JCAE, except for Secretary Kissinger who is expected to appear soon.

2. Informal attempts are being made by State, ERDA, and others to limit the scope of restrictions and of Congressional review requirements in pending bills (e.g., Military Aid and ERDA Authorization).

3. An Executive Order was recently issued setting up procedures for getting a coordinated Executive Branch position (State, ERDA, DOD, ACDA, and Commerce) on nuclear export licenses pending before the NRC. (State Department notifies NRC of the coordinated Executive Branch position.)

D. Additional Actions for Development and Evaluation

Several ideas have surfaced for possible alternative responses to the current situation. Each involves significant issues that require development and evaluation before being presented for decision. Possible actions identified thus far include:

1. Significant hardening of U.S. attitude on nuclear exports safeguards required before exports are permitted.

There appears to be divided views on this. Some probably will argue that past and current controls are as good as can be achieved and/or that tougher U.S. positions, taken unilaterally will not be effective recognizing that the requirements we impose are already tougher than those of most other suppliers with whom the U.S. competes for nuclear markets. Others will argue that anything the U.S. can do unilaterally or in cooperation with others that will help reduce the opportunity for proliferation is worth doing, recognizing the threat. Steps that might be considered to achieve a harder and consistent policy include:

a. Strong public message -- to supplement diplomatic channel efforts now underway -- to other supplier nations (France and Germany) emphasizing the need to curb proliferation and urging them to: (1) stop supplying reprocessing or enrichment technology to other nations, and (2) adopting more rigorous safeguards requirements.

b. Head of State meetings to carry out (a), above.

c. Move to renegotiate safeguards controls under existing agreements for cooperation as a condition for further exports, particularly giving the U.S. a veto on whether and where any fuel irradiated in U.S. reactors is reprocessed.

d. In addition to other actions, but not a substitute for, appoint a panel of experts not now involved in U.S. nuclear export activities to review past and current practices and submit recommendations to you for improvements.

2. Intensify efforts to discourage reprocessing (in the U.S. and abroad) until better controls (technological and institutional) can be worked out. (This needs to be considered in connection with domestic reprocessing issues, discussed in II, below.)

If this policy approach were to be taken, consideration would have to be given to:

a. Expanding storage for "spent" fuel elements, possibly making storage available to other countries.

b. "Buy back" of spent fuel elements.

c. Finding ways to replace the energy value of the plutonium and unused uranium in the spent fuel elements (which is in the range of 10-30% of the total energy value if reprocessing and recycle of plutonium was permitted).

d. Other incentives to discourage the separation of plutonium through reprocessing.

3. As a means to discourage the spread of reprocessing centers, provide U.S. reprocessing services to foreign countries.

This depends on development of reprocessing in the U.S. since we currently have no commercial reprocessing in operation.

a. Assist U.S. industry in demonstrating reprocessing and related technology (plutonium conversion, waste handling, safeguards), as discussed in II, below.

b. Urge or require U.S. firms planning to provide reprocessing services to dedicate a portion of their capacity to serve foreign needs, thereby potentially satisfying foreign needs for many years without the construction of reprocessing plants abroad.

c. Go beyond #2 above by offering to allow other governments to participate in the operation of the first expected reprocessing plant (Barnwell, South Carolina) as a demonstration of the concept of a multi-national reprocessing center.

d. Determine alternatives to returning plutonium to foreign reprocessing customers -- such as substituting energy equivalent of reprocessed fuel in the form of enriched uranium.

4. Propose international storage for excess plutonium.

IAEA has authority to establish repositories for excess nuclear materials. The U.S. could propose that this authority be implemented, that all nations store excess plutonium in such repositories and indicate that the U.S. would participate with the deposit of its excess plutonium.

5. Intensify efforts to strengthen IAEA safeguards.

a. Make available advanced U.S. safeguards technology to other nations and the IAEA.

b. Consider further strengthening of IAEA safeguards, expanding the proposal for a $5 million - 5 year voluntary U.S. contribution announced by the President on February 26, 1976.

II. NUCLEAR FUEL REPROCESSING AND SPREAD OF REPROCESSING TECHNOLOGY

A. Background

1. The principal driving forces behind the desire to establish a U.S. industry to reprocess "spent" fuel elements from commercial power reactors are to:

a. recover and reuse the plutonium and unused uranium from elements (with energy value of 10-30% of initial fuel input).

b. provide plutonium to fuel liquid metal fast breeder (LMFBR) reactors once they are used commercially.

c. reduce irradiated fuel and associated waste products to most manageable forms.

2. Technology for reprocessing has been demonstrated in AEC (now ERDA) operations.

3. Consistent policy followed that the reprocessing step in the nuclear fuel cycle is the responsibility of industry. Government sponsors R&D.

4. The principal driving forces behind the spread of reprocessing technology and equipment worldwide are:

a. Competition among the suppliers of nuclear energy reactors for sales in third countries;

b. Desire on the part of recipients of the technology and equipment to place as large a part of the nuclear fuel cycle as possible under their own national control;

c. desire by some for a nuclear weapons capability.

B. Current Problems

1. Demonstrating Technology in Commercial Operations

There is not now any commercial reprocessing capacity in the U.S.:

a. One plant that was operational (Nuclear Fuel Services) in Western, N.Y., is closed down and probably will not reopen.

b. A $70 million plant built at Morris, Illinois by GE is never expected to operate due to technological problems.

c. A $260 million plant, including only initial storage and separations stages of reprocessing, has been built in South Carolina by Allied Chemical and General Atomics (AGNES). Its actual operation depends upon:

- obtaining an NRC license;
- either (a) storage of separated plutonium in liquid form, or (b) construction of a $150 million conversion facility, for which Government assistance may be needed;
- construction of a $350 million waste solidification and packaging facility.

2. Licensing

Licensing of reprocessing facility depends upon resolution of a number of issues now pending before the NRC in one major and several other issues. The principal issue is whether to allow widespread recycling of plutonium. This depends upon resolving safety, environmental, economic, and safeguards issues -- which are being covered in a Generic Environmental Impact Statement which should be completed by early 1977, with an NRC decision in mid-1977.

3. Alternatives

The NRC statement almost certainly will have to deal with alternatives to reprocessing, some of which (such as indefinite storage of irradiated fuel) have not been fully studied. Also, the extent of the economic advantages of reprocessing depend upon the likelihood and timing of commercial breeder reactors. (The construction of the first demonstration reactor at Clinch River, Tennessee, has not begun, is behind schedule and is growing in cost.) Assuming reprocessing and recycle is permitted, NRC will have to issue complex safety, environmental and safeguards standards and guidelines. A thorough assessment of these factors has not been completed.

4. Decisions needed

Decisions are needed on whether and when to reprocess so that investment decisions can be made by industry to build either: (a) reprocessing facilities, or (b) additional storage facilities for spent fuel elements. One or the other and maybe both are needed to handle spent fuel from plants already in operation. The absence of firm plans is a factor in utility and utility commission decisions on nuclear power and in nuclear moratoria referenda.

5. Barnwell Facility

The consortium building the Barnwell reprocessing facility is experiencing financial problems due to higher costs and uncertainty about the future of reprocessing. Abandonment of the operation is conceivable.

C. Actions Taken or Underway

1. ERDA

a. 1977 Budget. The President's 1977 Budget included funds for additional R&D needed for reprocessing. It also contemplated a supplemental to fund some kind of assistance program to encourage construction of reprocessing facilities, once the right course of action was decided upon. (In practice, it may not be possible to implement a program until NRC decides on recycling of plutonium.)

b. Program Development. In February, ERDA solicited expressions of interest from industry on plans for providing reprocessing and on the types of assistance that might be necessary or appropriate (with emphasis on a minimum Federal role). Over 30 reponses were received and ERDA is now considering those in the development of its proposed program.

2. NRC is proceeding with hearings on the completed portions of the plutonium recycle generic impact statement and is completing the remaining portions -- all headed toward a decision in mid-1977.

3. ACDA, ERDA, and State are working to define the concept of a multinational reprocessing center and considering the possibility of some kind of foreign participation in the Barnwell facility. The desire for non-proliferation benefits has already attracted some Congressional support for assisting Barnwell to serve foreign users.

D. Additional Actions for Development and Evaluation. Resolution of questions about domestic reprocessing is key to any major nuclear policy announcements. A major effort will be needed to sort out reprocessing issues.

1. Immediate action to complete the development, analysis, and evaluation of the following:

a. The need for, timing of, and alternatives to reprocessing. This should provide a basis for executive branch (non-regulatory) decisions as to whether and when reprocessing should be encouraged. (Note that a decision to defer reprocessing might influence other countries to do the same.)

b. Alternative ways for the Government to work with industry to provide reprocessing capacity, assuming that we will proceed domestically with reprocessing.

2. Explore the potential for various forms of foreign involvement in domestic reprocessing facilities -- as outlined in I(D)(3) (pg. 5).

III. NUCLEAR WASTE MANAGEMENT

A. Background

1. Government policy has, since early 1970's, been that the Federal Government would take responsibility for long-term storage of high level wastes. Private industry is responsible (subject to regulation) for handling and packaging of wastes and delivering them in a prescribed form to a Federal repository for long-term storage.

2. Government policy has regarded the handling and storage of lower level radioactive wastes as an industry task, subject to Federal or State regulation. Some problems have emerged but these probably can be resolved within existing arrangements.

3. Approaches to long-term storage have been considered and then rejected: storage in the salt mine in Kansas and a temporary near surface storage facility. The program for developing acceptable approaches and providing a permanent repository heretofore has had relatively low priority.

4. There seems to be general agreement that technology is available to permit safe long-term storage, but there is a long way to go before a respository is in place and ready to receive wastes.

5. International plans and standards for disposal of nuclear wastes have not been adequately addressed.

B. Current Problems

1. The major task facing the Federal Government is finding an acceptable location(s) for a repository, constructing it, and opening it to receive wastes. Current assessments suggest that such a repository should be in place by 1985 and it is not clear that current plans -- which involve at least five Federal agencies -- will result in achieving this objective.

2. Finding a location for a repository acceptable to residents of the region selected will be a difficult task.

3. Related problems involve sorting out the roles and responsibilities of the several agencies involved; particularly, ERDA, NRC, EPA, and Geological Survey, and providing some continuing needs for inter-agency coordination.

4. The absence of convincing plans to have a high-level repository in place are contributing to: (a) the efforts by nuclear power opponents to slow down nuclear power, and (b) questions by utilities and utility commissions as to the desirability of committing to more nuclear plants.

5. Expected increase in nuclear wastes worldwide between now and 1990 will require development of international plans standards.

C. Actions Taken or Underway

1. ERDA

a. 1977 Budget. The President's 1977 Budget includes $65 million in outlays (compared to $12 million in FY 1976) to proceed with a waste management program. A large share of these funds will be used for exploratory drilling of various kinds of geologic formations around the country in order to find a suitable location for a pilot repository and operational repositories.

b. Technical Alternatives and Generic Environmental Impact Statement. ERDA has published an extensive technical alternatives document and is proceeding with development of the necessary generic environmental impact statement covering waste management with the objective of issuing a draft statement early in 1977 and a final statement late in 1977.

2. NRC is working on waste handling, packaging, transportation, and storage regulations and an associated environmental impact statement with the objective of completing work in 1978.

3. Interagency Task Force. An OMB-lead interagency task force is evaluating the schedules and the interagency relationships among the five agencies principally involved: ERDA, NRC, EPA, Geological Survey, and CEQ. This group's work has already identified potential obstacles that would prevent

having a repository available when needed. The problems include: (a) sequencing of each agency's activities so that information will be available to others when needed, (b) overlapping functions between NRC and EPA, and (c) continuing inter-agency coordination.

D. Additional Actions for Development and Evaluation

1. Develop a firm plan setting out all major actions which must be taken over the next ten years and when they will occur -- covering all forms of nuclear waste.

2. Develop a clear statement of roles and responsibilities (including solution of overlap in EPA and NRC functions), and develop arrangements for continuing inter-agency coordination.

3. Consider the extension of our domestic waste management plans and solutions internationally, perhaps through one or more of the following:

   a. Offer to make waste handling and storage technology available to other nations.

   b. Offer to investigate international waste disposal sites, either independent of or in conjunction with reprocessing arrangements.

   This will require consideration of controversial issues such as the storage in one country of wastes resulting from nuclear energy used in another country.

Nuclear Regulatory Comm.

THE WHITE HOUSE

WASHINGTON

September 16, 1976

MEMORANDUM FOR: PHILIP W. BUCHEN

FROM: DOUGLAS P. BENNETT DPB

SUBJECT: Waiver of Security for Member of the Nuclear Regulatory Commission

This memorandum requests that you waive security for the purposes of nomination of the following member of the Nuclear Regulatory Commission:

George F. Murphy, Jr.

P.W.B. Approve _____ Disapprove

For purpose of announcement and nomination only.

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 01334

Collection/Series/Folder ID	:	001900410
Reason for Withdrawal	:	NS,National security restriction
Type of Material	:	MEM,Memo(s)
Creator's Name	:	Bobbie Kilberg
Receiver's Name	:	Phil Buchen
Description	:	re Murphy nomination to NRC
Creation Date	:	09/16/1976
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Sanitized 9/9/04

THE WHITE HOUSE

WASHINGTON

September 16, 1976

MEMORANDUM FOR: PHIL BUCHEN

FROM: BOBBIE GREENE KILBERG

SUBJECT: George F. Murphy, Jr., to be Nominated as a Member of the Nuclear Regulatory Commission

I recommend that you sign Doug Bennett's request for a security clearance waiver for the purposes of announcement and nomination of George Murphy to be a member of the Nuclear Regulatory Commission. Murphy is presently Executive Director of the Join Congressional Committee on Atomic Energy.

[redacted] Mr. Murphy was the subject of a full field clearance by the FBI. When he joined the Joint Committee on Atomic Energy in 1958, he was the subject of another full field FBI clearance. Approximately 5 years ago he received a CIA special intelligence "Q" clearance. Mr. Murphy has daily access to top secret information in his present job.

I asked Mr. Murphy whether he had paid all his Federal, state and local taxes in every year in which he earned income. The answer was "yes". He reported that he has no tax liens outstanding and that there are no IRS proceedings pending against him. He reports that he has never been the subject of any investigation by the Special Prosecutor's office.

THE WHITE HOUSE

WASHINGTON

Date: 9/16/76

MEMORANDUM FOR: DOUG BENNETT

FROM: KEN LAZARUS

SUBJECT: GEORGE F. MURPHY, JR. (PAS)

Member, Nuclear Regulatory Commission

This is to notify you that the Counsel's Office has taken the following action with respect to the above-named individual:

1) Statement of Employment and Financial Interests, approved 9/16/76

2) Security Clearance, approved * Waived

3) Special Clearances, approved N/A

4) National Security Clearances,
approved
required and pending
not required at this time N/A **

Comments:

* Waived for purposes of announcement and appointment
** has a CIA special intelligence "Q" clearance in effect now. May require update. Am checking.

cc: Jim Connor
Bob Linder

Washburn, Abbott

THE WHITE HOUSE

WASHINGTON

July 23, 1976

Dear Abbott:

As you promised when I saw you briefly at the COMSAT dinner, the letter from you enclosing a copy of the Post editorial concerning export of nuclear material to India has reached me.

I will check further into this matter, because I believe you have a good point.

Sincerely,

Phil

Philip W. Buchen
Counsel to the President

The Honorable Abbott Washburn
Commissioner
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 22, 1976

Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D.C. 20500

Dear Phil:

With reference to the attached editorial.

Any agreement we have with India was nullified in 1974 when they used the other nuclear stuff we sent them for peaceful purposes and went ahead and built themselves a bomb.

This is no time for the Ford Administration to be tagged with lax handling of fissionable materials.

It's going to be a long hot summer for us Republicans without this.

Yours,

Abbott Washburn

Attachment

The Washington Post

JULY 19, 1976

Stop the Bomb-Peddling

WHAT IS SO rare as a day in June? An American public official who professes to think that the spread of nuclear weapons would be a good thing. And yet, if we may mix our authors a little, everyone talks about the danger of nuclear proliferation, but nobody does anything about it. That last formulation may be a little harsh, but it is manifestly true that

What is needed is some focus and decision and muscle at the top. It is even conceivably possible that a policy review and examination would lead to the conclusion that we might as well toss in the towel on our fitful antiproliferation efforts. But if that is not going to be the case, then a whole lot of tough questions are going to have to be addressed: If we cannot prevent

Nuclear
Regulatory

THE WHITE HOUSE
WASHINGTON

July 29, 1976

To: Ambassador Washburn

From: Eva Daughtrey Eva

Mr. Buchen asked me to
send you the attached.

THE WHITE HOUSE
WASHINGTON

July 29, 1976

To: Abbott

From: Phil P.

FOR IMMEDIATE RELEASE

JULY 27, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TEXT OF A LETTER FROM THE
PRPRESIDENT TO THE HONORABLE
JOHN B. ANDERSON

July 27, 1976

Dear John:

Recently, you have expressed your view that greater attention is needed to a number of important nuclear policy matters, including nuclear exports and fuel reprocessing. You have also suggested the possibility of using domestic reprocessing facilities to serve both domestic and foreign needs and to further worldwide efforts to control proliferation.

The matters you have identified are of continuing importance to this Administration and we have taken a number of steps to deal with them, all with the objective of providing safe, clean, economic and properly safeguarded nuclear power here and abroad. We are looking forward to more progress. For example, the passage of the Nuclear Fuel Assurance Act will be an important step toward the expansion of capacity in the United States to produce enriched uranium for nuclear power plants. This will help us maintain the influence associated with the U.S. role as a leading world supplier of nuclear fuel and equipment for peaceful purposes and thus contribute substantially to our non-proliferation objectives.

In addition, the departments and agencies have been examining additional options within their areas of responsibility that might contribute further to the achievement of our nuclear policy objectives. For example, we have been working with foreign nuclear suppliers and customers to strengthen controls against the diversion of nuclear materials. We are also proceeding with actions to resolve remaining questions with respect to domestic reprocessing and nuclear waste management.

Because nuclear policy issues are of such great importance, I believe they should be treated comprehensively. Accordingly, I have recently directed that a special concerted review be undertaken of our various nuclear policy objectives and options, particularly with respect to exports, reprocessing and waste management. In view of your special interest, I wanted you to know of this decision. The review will involve both domestic and international aspects. All Federal departments and agencies, as well as the policy groups in the Executive Office, that have responsibilities relating to nuclear policy will be involved in the review.

Mr. Robert W. Fri, who normally serves as Deputy Administrator of the Energy Research and Development Administration, has agreed to accept the responsibility for full-time leadership of the review effort. Mr. Fri's appointment to this temporary duty reflects my intent that special attention be given to this comprehensive review of nuclear policy issues.

more

I expect that the review group will complete the principal part of its work by early fall. If the group concludes that additional actions are warranted, I will review those recommendations carefully and, where appropriate, will follow up with proposals to the Congress.

I look forward to working with you as the review progresses.

GERALD R. FORD

The Honorable John B. Anderson
U.S. House of Representatives
Washington, D.C. 20515

# # # #