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COMMISSIONER

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

September 6, 1984

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WM Record File

205

WM Project

Docket No.

PDR

LPDR

MEMORANDUM FOR: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech

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DRAGONETTE

LH

(Return to WM, 623-SS)

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FROM: James R. Tourtellotte, Chairman
Regulatory Reform Task Force

SUBJECT: DIFFERING PROFESSIONAL OPINION RE: LEGAL FOUNDATION
FOR PROPOSED RULEMAKING AND URANIUM MILL TAILINGS
IMPLEMENTATION AND ENFORCEMENT POLICY

It is my understanding that the proposed Advance Notice of Proposed Rulemaking and the implementation and enforcement policy statement are based upon certain legal analyses presented by ELD and OGC. In my view as an attorney, neither analysis supports the proposed position or actions of the Commission. The ELD memo is cursory and unsubstantiated. The OGC paper selectively omits facts which would drive the conclusion in another direction. In short, these analyses are legally wrong and the proposed Commission actions are contrary to well established law. Moreover, there is no discussion of potentially overriding policy considerations.

The proposed actions of the Commission may unnecessarily surrender NRC jurisdiction to EPA. Surrendering jurisdiction would mean not only giving up certain rights, it would also mean abdicating responsibilities attendant to those rights. The long-term implications of such actions could be significant.

The precedent could be used to erode away our jurisdiction in other areas. Control over key regulatory matters would be lost. Effectiveness and efficiency would be seriously impaired. Viewed as a whole, the entire process would become more uncertain, perhaps even chaotic.

I respectfully request that the Commission take no action on this matter until after I am afforded an opportunity to provide a full legal analysis. In this regard, I propose that I be given 30 days after the final OGC paper emerges to answer and state an affirmative case. I further propose oral argument be held before the Commission at a reasonable time after all briefs are submitted.

cc: See attached list

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