

APR 3 1984

NOTE TO: Guy Cunningham
FROM: Bill Olmstead *Bill*
SUBJECT: URANIUM MILLING INDUSTRY BRIEF

1. The material dealing with Reorganization Plan 3 of 1970 is accurate and correctly states the legal position also embraced by NRC.
2. The material dealing with UMTRCA is highly selective and misleading. The legislative matter cited relates to the Udall version of § 275b. The Udall version was not enacted. Instead, the Dingell version was enacted. The Dingell version omitted any reference to site boundaries and added health and safety to the scope of EPA authority. The brief does not mention the following: (1) two letters from Costle (then Administrator of EPA) to the Congress that are more authoritative legislative history than Hendrie's or Rowe's testimony since the letters provided the model for the Dingell version, (2) Part 2 of the House Report 1480, p. 46, that address the Dingell version, noting that it differs from the Udall version on which Hendrie and Rowe testified, and (3) the testimony of Senator Randolph explaining the scope of EPA authority.
3. The Clean Water Act material is equally misleading. Train v. Colorado PIRG (426 U.S. 1) dealt only with the exclusion of source, byproduct, and special nuclear material from Clean Water Act coverage. In view of § 511 of the Clean Water Act and the NRC Yellow Creek decision one cannot say that the Clean Water Act supports the thesis that EPA is excluded generically from setting standards that apply inside the boundary of an operating facility.

We attach a draft copy of a question and answer recently prepared for Senator Simpson on the same subject. OGC (Trubatch) agrees that EPA standard setting authority under UMTRCA cannot be measured by the concepts embodied in Reorganization Plan 3 of 1970. We understand from OGC that the Commission informally considered action against EPA last October on the ground that EPA had exceeded its authority but rejected the idea.

Under these circumstances we advise against an amicus brief in support of the industry.

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QUESTION 20. Has EPA, in your judgment, gone beyond the bounds of its authority to promulgate generally applicable environmental standards for the radiological and nonradiological risks associated with uranium mill tailings, as required by section 275 of the Atomic Energy Act?

ANSWER.

We cannot say, in view of the language of UMTRCA and its legislative record, that EPA has overstepped its limits. It would not appear that EPA is bound, in establishing uranium mill tailings standards, by the same concept of "generally applicable environmental standards" that limit its authority under reorganization plan no. 3 of 1970.

The authority of EPA to set standards for uranium mill tailings must be reviewed against the background of the uranium mill tailings radiation control act of 1978 (UMTRCA), in particular, that portion of UMTRCA that is now § 275B. of the Atomic Energy Act. In H.R. 13650 (95th Congress, 2nd Session) the EPA's standard setting authority for mill tailings would have paralleled

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reorganization plan no. 3 authority in being limited to the environment outside the boundaries of the facility, but would also have extended it to include nonradioactive hazards as well. This version was not enacted. It was amended, apparently on the suggestion of EPA (see H. REPT. 95-1480, Part 1, P. 24, letter from Mr. Costle to Mr. Udall, and Ibid, Part 2, P. 46) to increase the scope of § 275B to include public health and safety as well as the environment, and to delete the limitation to standards outside the boundary of the facility. UMTRCA also directed EPA to be consistent with the solid waste disposal act regulations for nonradiological hazards. The scope of EPA's authority in this area was described by Senator Randolph as including authority to establish general standards of performance for siting, design and maintenance of tailings disposal sites, provision for groundwater monitoring, and for stabilization of wastes, as well as limits on environmental exposures or emissions. See Congressional Record, S18749, October 13, 1978. In 40 CFR 192 EPA has implemented Section 275B. Of the Atomic Energy Act almost to the full scope outlined by Senator Randolph.

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In the Uranium Mill Tailings area this Division of Regulatory responsibility has been difficult to administer. The EPA standards in 40 CFR 192 are basically onsite standards and may severely limit NRC's discretion in licensing alternative disposal methods that could prove to be equally effective.

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