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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

March 8, 2000



CHAIRMAN

The Honorable Robert F. Bennett  
United States Senate  
Washington, D.C.

Dear Senator Bennett:

I am responding to your letter of October 22, 1999, in which you asked for my personal views concerning the Commission's regulatory authority over certain uranium and thorium processed waste generated prior to 1978 and administered under the Formerly Utilized Sites Remedial Action Program (FUSRAP). My responses to your four questions are provided below.

1. Would you agree that the Commission should rethink its reluctance to regulate pre-1978 material?

*In addition to your letter, the Commission has received a number of other inquiries relating to its position on the pre-1978 material. In light of the concerns expressed by the various stakeholders, the Commission is well aware of the differing views on this important issue. A legislative solution would be the most direct approach to clarifying the NRC's responsibilities under UMTRCA.*

2. Would you agree that NRC licensing requirements for this material are more protective of public health and the environment than RCRA requirements?

*Both RCRA landfills and NRC-licensed disposal facilities are protective. In general, I believe that NRC-regulated and licensed disposal facilities, because they are subject to requirements that focus on protection of public health, safety, and the environment from radiological hazards, may afford more protection against radiological hazards.*

3. Would you agree that the decision in *Kerr-McGee v. NRC* (903 F.2d 1, D.C. Cir. 1990) supports NRC regulating all FUSRAP waste?

*Yes. I believe the decision in *Kerr-McGee v. NRC* does tend to support the NRC regulation of pre-1978 FUSRAP waste. However, this specific issue was not addressed by the court. Consequently, there is ambiguity as to the extent of the NRC's authority in this area. Thus, a legislative solution is the most direct approach to clarifying the NRC's responsibilities under UMTRCA.*

4. Would I, as NRC Chairman, support legislation that would absolutely make clear that pre-1978 FUSRAP waste should be regulated and disposed in licensed sites?

*If Congress believes that the NRC should regulate such waste, I stand ready to assist the Congress in amending UMTRCA. The NRC would need additional resources to regulate pre-1978 material.*

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Senator Bennett

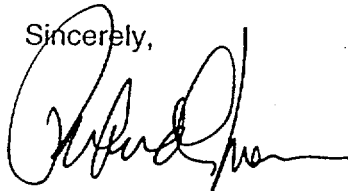
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I trust that this reply is responsive to your concerns and I apologize for my delay in responding. I look forward to working with you on this issue.

These responses represent my views and not necessarily those of the Commission.

Please contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Meserve", written in a cursive style.

Richard Meserve