

ROBERT F. BENNETT
UTAH

COMMITTEES
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JOINT ECONOMIC
SMALL BUSINESS

United States Senate

WASHINGTON, DC 20510-4403
(202) 224-5444

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Richard Meserve
Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Commissioner Meserve:

I am writing to ask for your assistance in responding to some questions which I was unable to ask at your nomination hearing. I would appreciate knowing your personal views on the NRC legal staff's conclusion that the Commission will not assert regulatory authority over certain uranium and thorium processed waste administered under the Formerly Utilized Sites Remedial Action Program (FUSRAP) generated prior to 1978. As you know, FUSRAP radioactive wastes generated after 1978 are regulated by NRC and must be disposed at licensed sites. With this in mind, I would appreciate your response to the following questions:

- Since there are no qualitative differences in the radioactive constituents of pre- and post-1978 FUSRAP waste, wouldn't you agree that the Commission should rethink its reluctance to regulate pre-1978 material?
- Wouldn't you agree that NRC licensing requirements for this radioactive material are more protective of public health and the environment than RCRA requirements applicable to landfills?
- The seminal case in this area is *Kerr-McGee v. NRC* (903 F.2d 1, D.C. Cir. 1990) in which the DC Circuit Court of Appeals concluded that the statute in question was intended to close regulatory gaps, not create them. Since you were the lead counsel for *Kerr-McGee* in this very case, wouldn't you agree that this decision supports NRC regulating all FUSRAP waste, instead of creating a gap in regulatory coverage for pre-1978 waste?
- If you believe the law is nonetheless ambiguous, would support as NRC Chairman legislation that would absolutely make it clear that this pre-1978 FUSRAP waste should be regulated and disposed only at licensed sites?

Thank you for your time in responding to these questions. I look forward to working with you on these matters.

Sincerely,



Robert F. Bennett
U.S. Senator

STATE OFFICES

- WALLACE BENNETT FEDERAL BUILDING
125 SOUTH STATE, SUITE 4225
SALT LAKE CITY, UT 84138-1188
(801) 524-5933
- FEDERAL BUILDING
324 25TH STREET, SUITE 1410
OGDEN, UT 84401-2310
(801) 625-5676
- OLD COURT HOUSE BUILDING
51 SOUTH UNIVERSITY AVENUE, SUITE 310
PROVO, UT 84601-4424
(801) 379-2525
- FEDERAL BUILDING
196 EAST TABERNACLE, SUITE 42
ST. GEORGE, UT 84770-3474
(801) 628-5514
- FEDERAL BUILDING
82 NORTH 100 EAST, SUITE 200
CEDAR CITY, UT 84720-2686
(801) 865-1335

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