CONGRESS ERECTS AMBIGUOUS WALL AGAINST BRC EXEMPTIONS

An amendment to the Atomic Energy Act gives states authority over radioactive wastes deemed “below regulatory concern.”

The National Energy Policy Act, its 800 plus pages signed into law by President Bush in October, includes major legislative victories for the nuclear power industry, from a stripped-down licensing system for construction of new reactors, to directions for making disposal standards for the Yucca Mountain high-level waste repository that are consistent with the recommendations of the National Academy of Sciences. But a potential stumbling block to the nuclear industry survived the legislative gauntlet: an amendment to the Atomic Energy Act that gives states the authority over radioactive wastes that might be deemed “below regulatory concern” (BRC) by the U.S. Nuclear Regulatory Commission.

While the measure has no immediate impact and is a watered down version of what the House of Representative originally proposed, its wording seems to stymie any attempt by the NRC to define levels of radioactivity in waste that would allow it to be safely released from the low-level radioactive waste disposal requirements. The amendment gives states the authority to step in and regulate the “disposal or off-site incineration” of any wastes so exempted by the NRC.

“It’s an unresolved issue,” says Kristen D.W. Morris, director of government relations for the Society of Nuclear Medicine and the American College of Nuclear Physicians. “It poses no problem to nuclear medicine as long as we retain the status quo,” says Ms. Morris, “but we can’t advance to establish BRC levels that make perfect scientific sense.”

Anti-nuclear groups who opposed the BRC policy aren’t happy with the legislation either. Maintaining that the measure on BRC was too “narrow,” Jonathan Becker of Public Citizen in Washington, DC says he’s not sure that the law will even apply to decommissioning of nuclear facilities. Mr. Becker says that his organization will take the NRC to court if the regulators try to enact rules based on the BRC concept. “There is no safe level of radiation exposure,” he declares.

Resources Are Limited

As physicians with expertise in nuclear safety, the Society and College have in the past advocated setting national standards for defining BRC. According to a draft position paper—not yet officially adopted by SNM and ACNP but reflecting views common among nuclear physicians—BRC “refers to levels of radioactivity so low that they present no measurable health or environmental hazards and need no special controls other than careful initial identification and review by radiation regulators.” The point behind defining BRC, advocates say, is that government and society have limited resources and should not waste resources needed elsewhere by treating BRC wastes as though they were especially hazardous.

The setting of national BRC standards would no doubt save the nuclear power industry money, but the savings would probably mean more to hospitals and research laboratories grappling with the increasing costs of low-level radioactive waste disposal and with less ability to pass expenses to consumers. Current NRC regulations allow hospitals and labs to dispose of minimal levels of some radioactive waste, such as that in patient body fluids, in regular sewers and municipal landfills, so in effect regulators have always made BRC-type distinctions.

The NRC’s proposed policy on BRC would have allowed no more than 10 mrem/year to an individual member of the public from any single BRC activity, such as landfill disposal of hospital waste. All the BRC activities combined could not give any individual more than 100 mrem/year. (The average background at sea level in the U.S. is 300 mrem/year.)

A recent study by the Environmental Protection Agency cited in the SNM and ACNP draft position paper determined that raising the allowable U.S. radiation exposure limit by 1 mrem/year would reduce the volume of low-level radioactive waste by 30% and save about $470 million. The cost would be 0.003 cancers per year—a curious, theoretical number extrapolated from statistics on cancers attributed to high-level radiation exposures.

NRC Widely Criticized

BRC became a rallying cry in 1990 when the NRC announced a new national policy intended to define on a national scale levels of radiation in waste and recyclables that could be exempted from the usual regulatory controls without endangering the public. Anti-nuclear power groups and some elected officials declared that the NRC was jeopardizing public safety in order to offer a financial bail-out for nuclear power plants. Other state and local officials criticized the NRC for failing to take into account the impact of the policy on local land fills, and state nuclear

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metabolism and mental competence.

Mr. White maintains that the decision to admit PET carries the influence of a judge’s written decision, widely circulated in legal journals. But as legal precedents go, the decision is weakened by the fact that the case neither went before a jury nor did the ruling reach a higher court.

Just how the court’s decision to admit the PET scans affected the ultimate outcome of the Weinstein case is the subject of dispute in itself. If the PET evidence had not been allowed, Mr. White believes the psychiatric testimony in defense of Mr. Weinstein would have collapsed. Age 64 at the time of the crime, Mr. Weinstein had not been prone to violence at any time in his past. He had suffered an unexplained seizure in the 1940s. The MRI performed after the crime disclosed the cyst, but did not show if it was hampering brain function. For that the FDG-PET studies were critical. So when Justice Carruthers issued his decision to accept both PET and SCR on October 8, Mr. White appeared to hold the upper hand. But on October 20, Mr. White and his client struck a plea agreement with the district attorney. Mr. Weinstein pled guilty to charges of manslaughter, which carries a prison sentence of 7 to 21 years. Why?

“A guilty plea worked in our interest,” says Mr. White. The district attorney had sought a murder conviction, which would have landed his client in prison for 25 years to life. Given the grim details of the crime, Mr. White says he doubted that jurors would have much sympathy for an insanity defense and might go ahead and convict Mr. Weinstein of murder or at best seek the lesser charge of manslaughter— in spite of the PET evidence, which a psychiatrist and neurologist were willing to testify, helped show that Mr. Weinstein was not responsible for the killing.

Mr. White claims that the prosecutor would never have agreed to a plea if the judge had excluded the PET evidence. The district attorney’s office declined to comment on the case.

PET scans may have been vindicated in a criminal trial, but Mr. Weinstein certainly was not. At age 65, he’ll be spending at least the next seven years in prison.

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**BRC Amendment**

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regulators complained that they had no opportunity for input.

The NRC responded by putting an indefinite moratorium on the BRC policy and tried to negotiate a consensus with environmental groups, state regulators and others, but that process died aborning late in 1991 when each of the environmental groups declined to take part (see Newsline, January 1991, p. 25N). Since then the NRC has been quietly developing individual rules employing the BRC principle, including the establishment of allowable levels of radioactivity in pipes, concrete and other material from decommissioned nuclear plants. An NRC spokesperson told Newsline that regulators hadn’t yet determined whether the amendment on BRC will prevent the NRC from enacting such new rules.

NRC Chairman Ivan Selin had lobbied lawmakers to drop the amendment when it was first proposed in the House of Representatives. In a June 26, 1992 letter to Rep. George Miller, Chairman of the Interior Committee and sponsor of the bill, Mr. Selin warned that independent regulation by states “could actually decrease the protection of public health and safety by imposing conflicting regulatory requirements and diverting licensee and agency resources.” The NRC Chairman went on to say that granting states authority beyond NRC on low-level waste could open the door to a succession of legal challenges that would disrupt the federal regulation of nuclear safety and drain agency resources from protection of the public.

Whether Mr. Selin’s concerns of last summer persist is not yet clear. As originally proposed, the measure included the “management” and “storage” of low-level radioactive waste and “other practices or materials involving low-level radioactivity,” which would include consumer products using very low levels of radioactivity. Congress deleted the broader language from the bill before sending it to the President.

In coming months, the need for national BRC standards could become more critical. Some states and municipalities have signaled that they might start cracking down on low-level waste disposal in landfills and sewers. “Setting these BRC standards offers protection against knee-jerk unscientific reactions,” says Ms. Morris of SNM and ACNP. If hospital and research wastes that now go to sewers, landfills and incinerators were designated low-level radioactive waste, each hospital inpatient would have to pay an estimated $2000 more in medical bills, according to the SNM and ACNP draft position paper. Scientific investigators worry about a less direct loss to the nation: research made unaffordable. “It would be an economic nightmare,” says Ms. Morris.

To such concerns Mr. Becker of Public Citizen responds that he has no objections to nuclear medicine, but he opposes the nuclear power industry and is working to stop it. He says that “there is no reason for nuclear power to be able to pass off its responsibilities to the public” by disposing of wastes in municipal land fills. The answer to waste disposal problems according to Public Citizen, Greenpeace and other anti-nuclear groups interviewed by Newsline is “First, we have to stop producing nuclear waste.”

“The future of nuclear power,” says Mr. Becker, “rests on waste disposal.”

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