

RADIOACTIVE IMPORT DETERRENCE ACT

DECEMBER 2, 2009.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 515]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 515) to prohibit the importation of certain low-level radioactive waste into the United States, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	2
Purpose and Summary	2
Background and Need for Legislation	2
Legislative History	4
Committee Consideration	5
Committee Votes	5
Statement of Committee Oversight Findings and Recommendations	8
New Budget Authority, Entitlement Authority, and Tax Expenditures	8
Statement of General Performance Goals and Objectives	8
Constitutional Authority Statement	8
Earmarks and Tax and Tariff Benefits	8
Federal Advisory Committee Statement	8
Applicability of Law to Legislative Branch	8
Federal Mandates Statement	8
Committee Cost Estimate	8
Congressional Budget Office Cost Estimate	9
Section-by-Section Analysis of the Legislation	9

Changes in Existing Law Made by the Bill, as Reported	10
Exchange of Letters	12
Dissenting Views	15

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Radioactive Import Deterrence Act”.

SEC. 2. PROHIBITION OF IMPORTATION.

(a) AMENDMENT.—Chapter 19 of the Atomic Energy Act of 1954 (42 U.S.C. 2015 et seq.) is amended by inserting after section 276 the following new section:

“SEC. 277. IMPORTATION OF LOW-LEVEL RADIOACTIVE WASTE.—

“a. Except as provided in subsection b. or c., the Commission shall not issue a license authorizing the importation into the United States of—

“(1) low-level radioactive waste (as defined in section 2 of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b)); or

“(2) specific radioactive waste streams exempted from regulation by the Commission under section 10 of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021j).

“b. Subsection a. shall not apply to—

“(1) low-level radioactive waste being returned to a United States Government or military facility which is authorized to possess the material; or

“(2) low-level radioactive waste resulting from the use in a foreign country of nuclear material obtained by the foreign user from an entity in the United States that is being returned to the United States for management and disposal.

“c. The President may waive the prohibition under this section and authorize the grant of a specific license to import materials prohibited under subsection a., under the rules of the Commission, only after a finding that such importation would meet an important national or international policy goal, such as the use of waste for research purposes. Such a waiver must specify the policy goal to be achieved, how it is to be achieved, and the amount of material to be imported.

“d. A license not permitted under this section that was issued before the date of enactment of this section may continue in effect according to its terms, but may not be extended or amended with respect to the amount of material permitted to be imported.”.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents for the Atomic Energy Act of 1954 is amended by inserting after the item relating to section 276 the following new item:

“Sec. 277. Importation of low-level radioactive waste.”.

PURPOSE AND SUMMARY

H.R. 515, the “Radioactive Import Deterrence Act”, was introduced by Reps. Bart Gordon, Lee Terry, and Jim Matheson on January 14, 2009. The purpose of H.R. 515 is to prohibit the importation of certain low-level radioactive waste into the United States.

BACKGROUND AND NEED FOR LEGISLATION

Under the Low-Level Radioactive Waste Policy Act of 1980 (P.L. 96–573), “low-level radioactive waste” is defined as radioactive material that is not high-level radioactive waste, spent nuclear fuel, or byproduct material. It is classified according to its potential hazard as either A, B, or C under regulations issued by the Nuclear Regulatory Commission (NRC). Class A waste generally contains lower concentrations of long half-lived radioactive material than Class B, and Class B waste contains lower concentrations than Class C waste. The NRC indicates that Class A waste accounts for about 90% of the total volume of low-level waste.

Low-level waste is generated from a variety of sources, including commercial activities at nuclear reactors, manufacturing, and other industrial uses, as well as government sources, academic users, and medical facilities.

The Low-Level Radioactive Waste Policy Amendments Act of 1985 established the policy that each state is responsible for disposing of low-level radioactive waste generated within its borders. The Act encouraged states to enter into interstate compacts under which a group of states would agree to develop a common site to dispose of their waste. In return, the Act authorizes a compact to exclude waste produced outside the member states from its regional disposal facilities (an action which otherwise would be prohibited by the interstate commerce clause). Ten regional compacts have been formed and received the required approval of Congress. Eight states, Puerto Rico, and the District of Columbia remain unaffiliated.

Progress toward siting and opening new facilities to serve the various compacts has been slow. At present, there are only three active licensed facilities: Barnwell, South Carolina, which accepts waste only from the Atlantic Compact states of Connecticut, New Jersey, and South Carolina; Richland, Washington, which accepts waste only from the eight members of the Northwest Compact (and, by special agreement, the Rocky Mountain Compact); and a commercial facility located in Clive, Utah (a member state of the Northwest Compact) and operated by EnergySolutions, a company based in Salt Lake City, Utah.

The Clive facility is licensed by the State of Utah for safety purposes in the state's capacity as an NRC agreement state, and is permitted to accept Class A low-level radioactive waste from all regions of the United States. According to the Government Accountability Office (GAO), based on projected Class A disposal volumes, this facility is expected to reach its capacity in approximately 32 years.¹ A company called Waste Control Specialists has obtained a license from the State of Texas to dispose of low-level radioactive waste at a fourth facility in Andrews County, Texas. Construction of the new disposal facility is expected to take about a year, with disposal operations scheduled to begin in late 2010.

EnergySolutions has filed a license application with the NRC to import up to approximately 20,000 tons of various types of materials from decommissioned nuclear facilities in Italy (including metals, wood, paper, plastic, liquids and certain resins). According to the NRC,² EnergySolutions proposes to process and recycle the material in facilities it operates at its Bear Creek facility in Tennessee in accordance with licenses issued by that state. After treatment, the company proposes to send the remaining waste to its facility in Clive, Utah for disposal and states that the volume would be reduced so the ultimate amount of material disposed at Clive would be a small fraction of what is disposed of annually at the facility. The company has also applied for an export license to return any waste that does not qualify for disposal at its Utah facility to Italy.

¹ Subcommittee on Energy and Air Quality hearing, Testimony of Gene Aloise, Government Accountability Office (May 20, 2008).

² U.S. Nuclear Regulatory Commission Fact Sheet, "Energy Solutions' Proposal to Import Low-Level Radioactive Waste from Italy."

NRC regulations require any company wishing to import low-level radioactive waste to apply for a license from the Commission to import material to a specified destination in accordance with all existing domestic laws and regulations applicable to the material. NRC has said that it “will not grant an import license for waste intended for disposal unless it is clear from these consultations [with the relevant state and compact] that the waste will be accepted by the applicable host Agreement State and where applicable, Low-Level Radioactive Waste Compact.”³ On June 23, 2009, NRC proposed to amend its regulations governing the export and import of radioactive waste to include this consultation concept in the import licensing criteria.⁴

On May 12, 2008, the Northwest Compact took the position that EnergySolutions does not have a necessary “arrangement” with the compact to import the Italian waste into Utah; that the Compact Committee has never considered or reviewed the issue of adopting an arrangement that would provide low-level radioactive wastes generated in foreign countries access to the region for disposal at the EnergySolutions facility in Clive, Utah; and that such an arrangement would need to be adopted by the compact prior to such waste being afforded access to the region for disposal. On May 15, 2008, Mike Garner, the Executive Director of the Northwest Compact, notified the NRC that “should it choose to issue the import license (IW023) it is doing so with the understanding there is no facility within the Northwest Compact region that is authorized to legally accept this waste for disposal.”

Since October 6, 2008, NRC has held the EnergySolutions license application in abeyance pending resolution of a lawsuit by EnergySolutions challenging the Northwest Compact’s authority to block the proposed import. On May 15, 2009, the federal district court found in a declaratory judgment that the compact lacks authority to restrict the flow of waste from outside the region to the Clive facility. An appeal of this decision is currently pending before the Tenth Circuit Court of Appeals.

LEGISLATIVE HISTORY

H.R. 515, the “Radioactive Import Deterrence Act”, was introduced by Reps. Bart Gordon, Lee Terry, and Jim Matheson on January 14, 2009, and referred to the Committee on Energy and Commerce, and also to the Committee on Ways and Means. H.R. 515 was subsequently referred to the Subcommittee on Energy and Environment on January 15, 2009.

On October 16, 2009, the Subcommittee on Energy and Environment held a legislative hearing on H.R. 515. Testimony was received from the following witnesses: Margaret M. Doane, Director, Office of International Programs, U.S. Nuclear Regulatory Commission; Leonard C. Slosky, Executive Director, Rocky Mountain Low Level Waste Board; and Val Christensen, President, EnergySolutions.

³ Subcommittee on Energy and Air Quality (House Committee on Energy and Commerce) hearing, Testimony of Margaret M. Doane, U.S. Nuclear Regulatory Commission (May 20, 2008).

⁴ Federal Register 29614 (June 23, 2009).

COMMITTEE CONSIDERATION

On November 3, 2009, the Subcommittee on Energy and Environment met in open markup to consider H.R. 515. The Subcommittee agreed to favorably forward H.R. 515 to the full Committee, amended, by a voice vote. On November 19, 2009, the Committee on Energy and Commerce met in open markup session to consider H.R. 515, as amended by the Subcommittee on November 3, 2009. The full Committee ordered H.R. 515 favorably reported to the House, as amended, by a roll call vote of 34 to 12.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Waxman to order H.R. 515 favorably reported to the House, as amended, was agreed to by a roll call vote of 34 yeas and 12 nays. The following is a record of the recorded vote taken, including the names of those Members voting for and against:

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 134

BILL: H.R. 515, the “Radioactive Import Deterrence Act”.

AMENDMENT: An amendment by Mr. Whitfield, # 1, to allow the Nuclear Regulatory Commission to issue a license for the importation of low-level radioactive waste if in the view of the Commission there is adequate disposal capacity in the United States and the applicant holds a certain export license relating to the low-level radioactive waste.

DISPOSITION: NOT AGREED TO by a roll call vote of 17 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall			
Mr. Markey		X		Mr. Upton	X		
Mr. Boucher	X			Mr. Stearns	X		
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield	X		
Mr. Rush				Mr. Shimkus	X		
Ms. Eshoo		X		Mr. Shadegg			
Mr. Stupak		X		Mr. Blunt			
Mr. Engel				Mr. Buyer	X		
Mr. Green		X		Mr. Radanovich	X		
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack	X		
Mr. Doyle		X		Mr. Walden	X		
Ms. Harman				Mr. Terry	X		
Ms. Schakowsky				Mr. Rogers			
Mr. Gonzalez				Mrs. Myrick			
Mr. Inslee				Mr. Sullivan	X		
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess			
Mr. Weiner				Ms. Blackburn	X		
Mr. Matheson		X		Mr. Gingrey			
Mr. Butterfield				Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen							
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 135

BILL: H.R. 515, the "Radioactive Import Deterrence Act".

MOTION: A motion by Mr. Waxman to order H.R. 515 favorably reported to the House, as amended.
(Final Passage)

DISPOSITION: AGREED TO by a roll call vote of 34 yeas to 12 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman	X			Mr. Barton		X	
Mr. Dingell	X			Mr. Hall			
Mr. Markey	X			Mr. Upton		X	
Mr. Boucher	X			Mr. Stearns		X	
Mr. Pallone	X			Mr. Deal	X		
Mr. Gordon	X			Mr. Whitfield		X	
Mr. Rush				Mr. Shimkus		X	
Ms. Eshoo	X			Mr. Shadegg			
Mr. Stupak	X			Mr. Blunt			
Mr. Engel	X			Mr. Buyer	X		
Mr. Green	X			Mr. Radanovich		X	
Ms. DeGette	X			Mr. Pitts		X	
Mrs. Capps	X			Ms. Bono Mack		X	
Mr. Doyle	X			Mr. Walden	X		
Ms. Harman				Mr. Terry	X		
Ms. Schakowsky				Mr. Rogers			
Mr. Gonzalez				Mrs. Myrick			
Mr. Inslee	X			Mr. Sullivan		X	
Ms. Baldwin	X			Mr. Murphy of PA		X	
Mr. Ross	X			Mr. Burgess			
Mr. Weiner	X			Ms. Blackburn		X	
Mr. Matheson	X			Mr. Gingrey			
Mr. Butterfield				Mr. Scalise		X	
Mr. Melancon	X						
Mr. Barrow	X						
Mr. Hill	X						
Ms. Matsui	X						
Mrs. Christensen							
Ms. Castor	X						
Mr. Sarbanes	X						
Mr. Murphy of CT	X						
Mr. Space	X						
Mr. McNerney	X						
Ms. Sutton	X						
Mr. Braley	X						
Mr. Welch	X						

STATEMENT OF COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 515 would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply to H.R. 515 as the bill does not authorize funding.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the constitutional authority for H.R. 515 is provided in Article I, section 8, clauses 3 and 18.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 515 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

FEDERAL ADVISORY COMMITTEE STATEMENT

No advisory committees were created by H.R. 515 within the meaning of section 5 U.S.C. App., 5(b) of the Federal Advisory Committee Act.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

The Committee finds that H.R. 515 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1985.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimates of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandate Reform Act.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate on H.R. 515 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 515 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

DECEMBER 1, 2009.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 515, the Radioactive Import Deterrence Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 515—Radioactive Import Deterrence Act

H.R. 515 would prohibit the Nuclear Regulatory Commission (NRC), with certain exceptions specified by the bill, from issuing licenses to import certain types of low-level radioactive waste. Based on information from the NRC, CBO estimates that the proposed prohibition would not significantly affect net spending by the agency; any such spending would be subject to appropriation and largely offset by certain fees that the NRC is authorized to collect from regulated entities. Enacting the bill would not affect direct spending or revenues.

H.R. 515 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no cost on state, local, or tribal governments.

The prohibition on issuing, extending, or amending licenses would be a private-sector mandate, as defined in UMRA, on importers of certain types of low-level radioactive waste. The cost of the mandate would be the loss in net income to importers. Information from industry sources suggests that the growth in gross revenues from the future import of low-level radioactive waste could be significant. However, those revenues would depend on the amount of waste authorized for import in licenses issued or amended by the NRC in the absence of the bill. Consequently, CBO cannot determine whether the cost of the mandate would exceed the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

The CBO staff contacts for this estimate are Megan Carroll (for federal costs) and Amy Petz (for the private-sector impact). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1: Short title

This section provides that the short title of the bill is the “Radioactive Import Deterrence Act”.

Section 2: Prohibition of importation

This section amends the Atomic Energy Act by creating a new section 277. Subsection a. of the new section 277 provides that the Nuclear Regulatory Commission shall not issue licenses authorizing the importation into the United States of low-level radioactive waste and radioactive waste below regulatory concern.

Subsection b. provides exceptions to the prohibition in subsection a. for federal government or military use and for the return to the United States for management and disposal of low-level radioactive waste resulting from the use in a foreign country of certain United States origin nuclear material.

Subsection c. authorizes the President to waive the prohibition in subsection a. for a specific license application upon a finding that the importation would meet an important national or international policy goal. The subsection includes an illustrative example of such a policy goal: the use of waste for research purposes by private, non-profit, or government entities. Such a waiver must specify the policy goal to be achieved, how it is to be achieved, and the amount of material to be imported.

Subsection d. provides that licenses issued before the date of enactment of this section may continue in effect on their original terms, but may not be extended or amended with respect to the amount of material permitted to be imported.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

ATOMIC ENERGY ACT OF 1954

TITLE I—ATOMIC ENERGY

* * * * *

CHAPTER 19. MISCELLANEOUS

* * * * *

Sec. 277. Importation of low-level radioactive waste.

* * * * *

CHAPTER 19—MISCELLANEOUS

* * * * *

SEC. 277. IMPORTATION OF LOW-LEVEL RADIOACTIVE WASTE.—

a. Except as provided in subsection b. or c., the Commission shall not issue a license authorizing the importation into the United States of—

(1) low-level radioactive waste (as defined in section 2 of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b)); or

(2) specific radioactive waste streams exempted from regulation by the Commission under section 10 of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021j).

b. Subsection a. shall not apply to—

(1) low-level radioactive waste being returned to a United States Government or military facility which is authorized to possess the material; or

(2) low-level radioactive waste resulting from the use in a foreign country of nuclear material obtained by the foreign user from an entity in the United States that is being returned to the United States for management and disposal.

c. The President may waive the prohibition under this section and authorize the grant of a specific license to import materials prohibited under subsection a., under the rules of the Commission, only after a finding that such importation would meet an important national or international policy goal, such as the use of waste for research purposes. Such a waiver must specify the policy goal to be achieved, how it is to be achieved, and the amount of material to be imported.

d. A license not permitted under this section that was issued before the date of enactment of this section may continue in effect according to its terms, but may not be extended or amended with respect to the amount of material permitted to be imported.

* * * * *

EXCHANGE OF LETTERS

CHARLES B. RANGEL, NEW YORK,
CHAIRMAN

FORTNEY RITE STARK, CALIFORNIA
SANDER M. LEVIN, MICHIGAN
JIM McDERMOTT, WASHINGTON
JOHN LEWIS, GEORGIA
RICHARD E. NEAL, MASSACHUSETTS
JOHN S. TANNER, TENNESSEE
XAVIER BECERRA, CALIFORNIA
LLOYD DONSETT, TEXAS
FARR, POMEROY, NORTH DAKOTA
MIKE THOMPSON, CALIFORNIA
JOHN B. LARSON, CONNECTICUT
FARR, BLUMENAUER, OREGON
RON KIMO, WISCONSIN
BILL PASCRELL, JR., NEW JERSEY
SHELLEY BINKLEY, NEVADA
JOSEPH CROWLEY, NEW YORK
CHRIS VAN HOLLEN, MARYLAND
KENDRICK B. MEER, FLORIDA
ALLYSON Y. SCHWARTZ, PENNSYLVANIA
ARTUR DAVIS, ALABAMA
DANNY K. DAVIS, ILLINOIS
BON ETHERIDGE, NORTH CAROLINA
LINDA T. SANCHEZ, CALIFORNIA
BRIAN HIGGINS, NEW YORK
JOHN A. YAMMUTH, KENTUCKY

JANICE MAYES
CHIEF COUNSEL AND STAFF DIRECTOR

Congress of the United States

U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

1102 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-3625

Washington, DC 20515-6518

<http://waysandmeans.house.gov>

December 1, 2009

DAVE CAMP, MICHIGAN
WALLY HERGER, CALIFORNIA
SAM JOHNSON, TEXAS
KEVIN BRADY, TEXAS
PAUL RYAN, WISCONSIN
ERIC CANTON, VIRGINIA
JOHN LINDER, GEORGIA
DEVIN HUNES, CALIFORNIA
PATRICK J. TIERNE, OHIO
GINNY BROWN-WHITE, FLORIDA
GEOFF DAVIS, KENTUCKY
DAVID G. REICHERT, WASHINGTON
CHARLES W. BOUSTANY, JR., LOUISIANA
DEAN HELLER, NEVADA
PETER J. ROSSCA, ILLINOIS

JON TRAUER
MINORITY STAFF DIRECTOR

The Honorable Henry Waxman
Chairman, Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am writing regarding H.R. 515, the "Radioactive Import Deterrence Act." As you know, the Committee on Ways and Means has received a sequential referral on this bill.

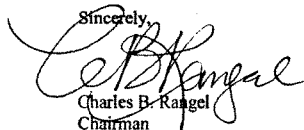
To expedite this legislation for floor consideration, the Committee on Ways and Means will forgo action on this bill. This is being done with the understanding that the Committee on Energy and Commerce will confirm in the legislative history of the bill that the President's discretion to waive section 277(a) of the Atomic Energy Act of 1954 applies to any important national or international policy goal, and is not limited to the use of waste for research purposes.

The Committee on Ways and Means is forgoing action on the bill with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this bill or similar legislation in the future.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 515, and would ask that a copy of our exchange of letters on this matter be included in the *Congressional Record* during consideration of this bill.

Once again, thank you for your work and cooperation on this legislation.

Sincerely,



Charles B. Rangel
Chairman

The Honorable Henry Waxman
December 1, 2009
Page 2

cc: The Honorable Nancy Pelosi
The Honorable Steny Hoyer
The Honorable John Boehner
The Honorable Joe Barton
The Honorable Dave Camp
Mr. John Sullivan, Parliamentarian

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

December 1, 2009

The Honorable Charles B. Rangel
Chairman
Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

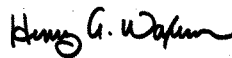
Dear Chairman Rangel:

Thank you for your letter regarding H.R. 515, the "Radioactive Import Deterrence Act of 2009." The Committee on Energy and Commerce recognizes the jurisdictional interest of the Committee on Ways and Means in H.R. 515, and I appreciate your effort to facilitate consideration of this bill.

Your letter accurately stated that the report of the Committee on Energy and Commerce on H.R. 515 will confirm that the President's discretion to waive section 277(a) of the Atomic Energy Act of 1954 applies to any important national or international policy goal, and is not limited to the use of waste for research purposes. I also concur that by forgoing action on the bill the Committee on Ways and Means does not in any way prejudice the Committee with respect to its jurisdictional prerogatives on this bill or similar legislation in the future, and I would support your effort to seek appointment of an appropriate number of conferees to any House-Senate conference involving this legislation.

I will include our letters on H.R. 515 in the *Congressional Record* during floor consideration of the bill and in the Committee report on H.R. 515. Again, I appreciate your cooperation regarding this legislation and I look forward to working with the Committee on Ways and Means as the bill moves through the legislative process.

Sincerely,



Henry A. Waxman
Chairman

cc: The Honorable Nancy Pelosi, Speaker
The Honorable Steny Hoyer, Majority Leader
The Honorable John Boehner, Minority Leader
The Honorable Joe Barton
The Honorable Dave Camp
Mr. John Sullivan, Parliamentarian

DISSENTING VIEWS

We, the undersigned Members of the Committee on Energy and Commerce, oppose the passage of H.R. 515 and submit the following comments to express our concerns with this legislation.

H.R. 515 would prohibit the importation of low-level radioactive waste into the United States subject to limited exceptions for federal or military facilities, or for U.S.-origin material that has been shipped abroad for use in a foreign country and is being returned to the United States for management and disposal. This legislative proposal is both unnecessary and could prevent U.S. companies from competing internationally in the global market for nuclear services.

The Nuclear Regulatory Commission (NRC) currently has a well-established legal and regulatory framework for importing waste and it is not apparent that the existing regime needs to be changed. As the record before the Committee reflects, under that regime NRC reviews all import and export license applications against specific criteria, conducts full health and safety and national security evaluations of these applications, and coordinates with agencies within the Executive Branch and with the host State where the waste would be processed and/or disposed. The Commission also takes steps to ensure that no radioactive waste imported into the United States will become orphaned waste. The NRC will not grant an import license for waste intended for disposal unless it is clear that the waste will be accepted by the applicable host Agreement State and, where applicable, the Low-Level Radioactive Waste Compact.

While proponents of H.R. 515 have contended that there is insufficient disposal capacity in the U.S. for the low-level waste that is the subject of the bill, in fact the importation of limited amounts of foreign low-level radioactive waste does not and will not in the coming decades raise significant disposal capacity issues in the United States. An amendment offered by Reps. Whitfield and Pitts that would have required the Commission to take into consideration domestic capacity before allowing importation of low-level radioactive waste and provide additional oversight authority by the Commission was rejected. As a practical matter, the low-level radioactive waste addressed in this bill is Class A waste. Based on the record before the Committee, there is currently more than sufficient capacity in the U.S. to accept limited quantities of imported Class A waste, consistent with existing strict NRC regulations and requirements.

At the same time, the record before the Committee also reflects that H.R. 515, if enacted, would undermine the ability of U.S. nuclear companies to participate in the global nuclear services market. To compete in that market, it is currently important for U.S. companies to be able to manage and, as appropriate, dispose of low-

level radioactive waste incidental to their provision of services. This proposed legislation would effectively prevent U.S. companies from competing for certain foreign contracts that could create jobs in the U.S. and result in substantial revenues for the U.S. economy. In an era of record high unemployment and a struggling economy, we strongly oppose legislation that erects new trade barriers that put our own companies at a competitive disadvantage in the international nuclear arena. We believe the U.S. can and should seek to be a leader in the construction, operation, and ultimate decommissioning of new nuclear plants around the world.

Further, at a time when the Majority and the Administration are supporting climate change legislation that assumes a significant expansion of nuclear power in the U.S., enacting legislation that places yet additional burdens on the U.S. nuclear industry may further discourage new nuclear development in the United States. This legislative proposal constitutes an unnecessary restriction and it appears will only make it more, not less difficult to promote the expansion of the nuclear industry in the United States.

JOE BARTON.
 FRED UPTON.
 ROY BLUNT.
 RALPH M. HALL.
 CLIFF STEARNS.
 ED WHITFIELD.
 JOHN SHADEGG.
 JOHN SHIMKUS.
 JOSEPH R. PITTS.
 GEORGE RADANOVICH.
 SUE MYRICK.
 JOHN SULLIVAN.
 MARSHA BLACKBURN.
 TIM MURPHY.
 PHIL GINGREY.

○