

GAO

Testimony

Before the Committee on Governmental Affairs,
U.S. Senate

For Release on Delivery
Expected at
9:00 a.m., EST
Tuesday
March 12, 1996

HEALTH AND SAFETY

Environmental Oversight of
Classified Federal Research

Statement of Bernice Steinhardt, Associate Director,
Energy, Resources, and Science Issues,
Resources, Community, and Economic
Development Division



Mr. Chairman, Mr. Ranking Minority Member, and Members of the Committee:

In October 1995, the presidential Advisory Committee on Human Radiation Experiments reported a troubling legacy of secret Cold War government radiation research on human subjects and experimental radiation releases into the environment whose scope and extent was previously unknown. Among many findings, the Committee criticized the government's historical research ethics and raised the possibility that events analogous to past secret environmental releases—such as the controversial Green Run atmospheric release at Hanford Works, Washington, in 1949¹—could still happen today. The report also mentioned alleged past environmental violations at a classified Air Force facility near Groom Lake, Nevada, as an indication that secret releases or analogous events could still occur, despite the environmental oversight system now in place. To guard against this, the Committee recommended the creation of an independent group to oversee the environmental consequences of classified research and a broader role for the Environmental Protection Agency (EPA) in overseeing classified research as well.

In line with this history, the Ranking Minority Member asked us to examine EPA's capability to conduct environmental oversight of classified federal research and the extent to which federal facilities and activities have been exempted from compliance with environmental laws. We conducted our work principally at the headquarters of EPA, the Department of Energy (DOE) and the Department of Defense (DOD), and at the Executive Office of the President. We relied primarily on unclassified discussions with responsible agency officials in obtaining information.

In summary:

- EPA's broad responsibilities include environmental oversight of federal facilities—including classified federal research planning and operations—but EPA's capability to conduct such oversight is limited. EPA is, however, taking steps to improve its environmental enforcement at classified federal facilities.
- While the President can exempt federal agencies from environmental requirements in cases involving the paramount interest of the U.S. or in the interest of national security, agencies have rarely sought such exemptions.

¹This classified atomic intelligence experiment released significant radioactive iodine and xenon emissions into the air over large portions of Washington and Oregon and was not disclosed for almost four decades. See *Nuclear Health and Safety: Examples of Post World War II Radiation Releases at U.S. Nuclear Sites* (GAO/RCED-94-51FS, Nov. 24, 1993).

We found only two instances of federal agencies obtaining Presidential exemptions from environmental laws. Although it is possible that exemptions were sought and obtained in secret, those with whom we spoke, including an official of the National Security Council, generally indicated they did not know of any such exemptions.

Background

In recent years, federal agencies, the Advisory Committee on Human Radiation Experiments, GAO, and others have documented hundreds of secret, intentional government releases of radiation and other pollutants into the environment in connection with the Cold War. The releases occurred in the years after World War II at locations around the country, including Tennessee, New Mexico, Washington, Alaska, and Utah. (See app. I.) Such releases typically occurred at remote federal installations, in an era when there was little federal or state environmental regulation of such activities.

Today, an extensive environmental oversight framework is in place. In accordance with NEPA, the Council on Environmental Quality's (CEQ) implementing regulations, and the Clean Air Act, EPA shares with CEQ the responsibility for overseeing federal agencies' environmental planning, including their classified planning. For example, under NEPA, federal agencies must assess the environmental impact of major federal actions significantly affecting the environment before they proceed and must submit environmental impact statements (EIS) for review by the public and other federal agencies; EPA is supposed to review these EISS, including those portions containing classified information. CEQ, within the Executive Office of the President, conducts administrative oversight of agencies' NEPA programs.

NEPA also places public disclosure requirements on agencies. However, NEPA and its implementing regulations allow agencies to avoid public disclosure of classified proposals in the interest of national security. NEPA still requires agencies to prepare EISS and other NEPA assessments for classified actions, but CEQ regulations allow agencies to segregate information from public oversight in fully classified EIS documents or appendixes.

Federal agencies are also subject to the requirements of federal pollution control laws, such as the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act (RCRA). EPA has a mandate to oversee the enforcement of the environmental laws at federal facilities,

including those that conduct highly classified research operations. EPA's Office of Federal Facilities Enforcement is the agency's focal point for enforcement, including developing strategies and participating in enforcement oversight and litigation. EPA has some resources for inspecting highly classified facilities and storing classified documents, including headquarters and field personnel with the appropriate security clearances.

Under some laws, such as the Clean Water Act and RCRA, EPA can authorize states to carry out their own program for these laws if they meet certain requirements. Whether EPA or a state acts as the regulatory authority, federal agencies with facilities that are releasing pollutants into the environment must obtain required permits and are subject to inspections and enforcement actions.

Radioactive materials regulated under the Atomic Energy Act are exempt from RCRA and the Clean Water Act. DOE regulates these materials under its Atomic Energy Act authority. Over the years, we have issued numerous reports addressing how well various EPA, DOE, and DOD programs implement this framework. (See app. II.) We found that although EPA was given many additional pollution prevention, control, abatement, and enforcement initiatives, its budget for carrying out these activities did not keep pace with the increased responsibilities.

The Advisory Committee's report therefore recommended that (1) an independent panel review planned secret environmental releases and (2) EPA permanently keep key documents related to its environmental oversight of classified programs and report periodically to the Congress on its oversight of such programs. A February 1996 draft response by the Human Radiation Interagency Working Group² questions the need for the recommended independent review panel but agrees that EPA should keep permanent files of key environmental documents.

²The Advisory Committee reported to the Presidentially established Human Radiation Interagency Working Group. The interagency working group is composed of the heads of pertinent agencies and was established to oversee federal efforts to locate historical records describing radiation experiments on humans and radiation releases to the environment.

EPA's Oversight of Federal Agencies' Classified Research Activities Is Limited

EPA has responsibilities for overseeing federal facilities' activities, including classified federal research planning and operations. However, the agency's capability to conduct such oversight is limited. In large measure, under NEPA and other laws, EPA relies on the agencies themselves to have their own internal environmental monitoring programs. In part because of secrecy requirements, EPA is especially dependent on the cooperation of agencies in identifying their facilities and activities and reporting on the environmental impacts of their classified research planning and operations.

Environmental Oversight of Agencies' Classified Planning

EPA's Office of Federal Activities reviews hundreds of EISS each year, but according to activities office staff, only a tiny fraction of these—perhaps two or three a year—are either partially or fully classified. According to EPA, classified EISS are submitted almost exclusively by DOE and DOD. The activities office has two people with high-level clearances who review these classified EISS. EPA does not keep records of classified EISS that have been sent to it for review and does not store them, although it does have some classified storage capability. Classified EISS are stored at the agencies themselves. Officials in EPA's activities office said there is little incentive to establish such recordkeeping or more such storage at EPA because classified EIS submittals are rare.

Neither EPA nor CEQ has the responsibility or the resources to closely monitor and direct the EIS submittal process. Agencies are required to submit unclassified and classified EISS for EPA's review, but according to activities office officials, EPA is not charged with conducting outreach to ensure that all such EISS are submitted. Also, EPA is not responsible for reviewing the thousands of other lower level environmental planning documents—such as environmental assessments—which agencies generate each year; its review is limited to EISS, which are required for “major” actions only. As a result, EPA activities office staff said their overview of agencies' internal NEPA planning is very limited.

According to EPA records and activities office officials, historically some agencies have not been sending EISS to EPA for review, either classified or unclassified, as required. Such agencies include the Central Intelligence Agency (CIA), the National Security Agency (NSA), and the Defense Intelligence Agency. According to EPA officials who have been assigned the responsibility to review EIS's for the CIA and NSA over the past several years, they have not had contact with these agencies concerning EISS and do not know who these agencies' liaisons are for NEPA matters.

Furthermore, environmental compliance officials within the agencies may not be reviewing all classified research activities. According to a responsible Air Force NEPA compliance official, although his office is charged with reviewing classified EISS internally, historically the office has rarely received such documents for review. He said his office may not have a need-to-know for all such documents. He also could not recall his office receiving for review any unclassified or classified NEPA documents prepared for proposed projects at the classified Air Force operating location near Groom Lake, Nevada.

Agencies may conduct environmental planning secretly, and a proposed action may proceed without prior public comment. For example, in 1994, the government conducted Project Sapphire, a classified nuclear nonproliferation action that transferred highly enriched uranium from Kazakhstan in the former Soviet Union to storage at Oak Ridge, Tennessee. DOE conducted internal NEPA planning for Project Sapphire in the form of a detailed classified environmental assessment, but because it was an environmental assessment and not an EIS, EPA was not required to review the assessment and prior public comment was not possible for national security reasons. The public was fully apprised of the Project Sapphire environmental assessment after the uranium transfer was completed.

Environmental Oversight of Agencies' Classified Operations

According to EPA headquarters and regional enforcement officials, EPA and the states have been conducting enforcement activities at known classified federal research facilities, but management oversight of such enforcement has not been systematic. According to EPA, known facilities are inspected and required through EPA and/or state oversight to comply with environmental laws. However, neither EPA headquarters nor its regions have complete inventories of all classified federal facilities subject to environmental requirements, either nationally or at a regional level.

Instead, EPA headquarters and field enforcement officials said they depend on agencies to report the existence of their classified facilities, to report environmental monitoring data, and to cooperate with EPA and authorized states in assuring that such facilities are in compliance. They said they receive a degree of cooperation at known DOE and DOD classified facilities but are constrained by secrecy and need-to-know considerations. When they receive cooperation, they conduct appropriate field enforcement activities.

In this regard, an ongoing lawsuit by former employees at an Air Force facility near Groom Lake, Nevada, alleged violations of RCRA, including EPA's failure to conduct a RCRA inspection there. EPA has affirmed that EPA field inspectors conducted an inspection of the location pursuant to RCRA from December 1994 to March 1995. In August 1995, the U.S. District Court for the District of Nevada ruled that the plaintiffs' objectives in bringing the suit had been accomplished, in that EPA had performed its duties under RCRA to inspect and inventory the site.³

In May 1995, EPA and the Air Force affirmed by a memorandum of agreement that EPA will continue to have access at the Groom Lake facility for purposes of administering the environmental laws and that the Air Force is committed to complying with RCRA at the location. The details of the issues resulting in the agreement are classified. According to the director of EPA's Office of Federal Facilities Enforcement, EPA is fulfilling its oversight responsibility at the facility. However, he said he was uncertain of the extent to which other such highly classified federal facilities—or areas within facilities—may exist and whether their research operations are in environmental compliance.

According to the director of federal facilities enforcement, the degree of EPA's involvement in classified activities may broaden in the future. The agency is currently working with the Air Force on a broader memorandum of agreement applicable to all classified Air Force facilities. Also, the director said that EPA held a meeting in 1995 with other agencies, including intelligence agencies, concerning further possible memorandums of agreement similar to the one signed with the Air Force for Groom Lake. Also, EPA, in conjunction with agencies that have highly classified programs, is working on procedures for improved environmental regulation at classified installations.

Nevertheless, it is not clear that EPA will have the resources to oversee additional environmental compliance by any federal facilities. EPA's Office of Federal Facilities Enforcement is currently responsible for overseeing the cleanup of the 154 federal sites included in the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA has stated that it has the resources to oversee federal facilities' overall environmental management and compliance, but few additional resources for greater oversight of classified facilities.

³DOE v. Browner, 902 F. Supp.1240 (D. Nev. 1995).

Known Exemptions of Federal Facilities From Environmental Laws Have Been Rare

Although federal environmental laws allow the President to provide exemptions from environmental requirements in cases involving the paramount interest of the U.S. or in the interest of national security, federal agencies appear to have rarely sought these exemptions. We found only two cases in over 15 years of federal agencies obtaining presidential exemptions from environmental laws. While it is possible that exemptions were sought and obtained in secret, those with whom we spoke, including an official of the National Security Council, generally indicated they did not know of any such exemptions. Under NEPA, numerous less formal special arrangements have been obtained through emergency agreements with CEQ.

Presidential Exemptions

Presidential exemption provisions are contained in some environmental laws, including the Clean Water Act, the Clean Air Act, RCRA, the Safe Drinking Water Act, CERCLA, and the Noise Control Act. These provisions differ in detail but generally provide that the President can declare a facility or activity exempt from applicable environmental standards. Depending on the law, he may do so in the paramount interest of the nation or in the interest of national security. A presidential exemption can suspend the applicable pollution standards in the laws for whole facilities or specific sources of pollution. Generally, exemptions are for 1 to 2 years, may be renewed indefinitely, and must be reported to the Congress.

Executive Order 12088 gives agencies guidance on complying with the laws and contains implementation procedures. Generally, the head of an executive agency may recommend to the President, through the Director of the Office of Management and Budget (OMB), that an activity or facility be exempt from an applicable pollution control standard. According to an EPA official, the exemption mechanism is a “last resort” for agencies that may not be able to comply with environmental laws.

We found only two cases in which federal facilities have been exempted by the President from compliance with environmental laws. Responsible officials at several agencies and in the Executive Office of the President were aware of only these two exemptions:

- In October 1980, President Carter exempted Fort Allen in Puerto Rico from applicable sections of four environmental statutes—the Clean Water Act, the Clean Air Act, the Noise Control Act, and RCRA. The exemption was determined to be in the paramount interest of the U.S., allowing time for the relocation of thousands of Cuban and Haitian refugees to the fort

from Florida. The exemption was renewed once, in October 1981, by President Reagan.

- In September 1995, President Clinton exempted the Air Force's classified facility near Groom Lake, Nevada from the public disclosure provisions of RCRA, determining that the exemption was in the paramount interest of the United States.

According to OMB and the National Security Council (NSC), the most recent exemption was routed through NSC for Presidential attention, not through OMB as provided in Executive Order 12088.

Emergency Agreements Under NEPA

NEPA does not contain explicit exemption provisions related to paramount national interest or national security. The CEQ regulations implementing NEPA permit special arrangements when NEPA's procedures might impede urgent agency actions. According to CEQ's records, there have been at least 22 instances of emergency NEPA agreements between an agency and CEQ, usually for reasons of time criticality. Three of these recorded emergency arrangements concerned national policy or national security issues:

- In 1991, the Air Force and CEQ agreed to alternative measures instead of a written EIS—including noise abatement steps—so that aircraft launches from Westover Air Force Base, Massachusetts, toward the Persian Gulf could proceed in a timely manner.
- In 1991, the Air Force and CEQ agreed that an EIS was not required before conducting a Desert-Storm-related test of aerial deactivation of land mines at the Tonapah Range in Nevada.
- In 1993, DOE and CEQ agreed on alternative NEPA arrangements for U.S. acceptance of spent nuclear fuel from a reactor in Belgium. Subsequently, Belgium declined the U.S. offer of acceptance.

This concludes our testimony. We would be pleased to respond to any questions you or other Members of the Committee may have.

Documented Federal Environmental Tests/Releases 1944-77

1944-62:254 open air implosion physics tests, Atomic Energy Commission (AEC), Los Alamos National Laboratory, New Mexico

1948:3 radiological warfare experiments, AEC, Oak Ridge National Laboratory, Tennessee

1949-52:21 radiological warfare tests, U.S. Army, Dugway, Utah

1949:Green Run atmospheric radiation test, Air Force/AEC, Hanford, Washington

1950:4 atmospheric tracking tests, Air Force, Los Alamos National Laboratory, New Mexico

1954-?:Radionuclide laboratory and field studies, AEC/Health Physics Division/Massachusetts Institute of Technology, Oak Ridge, Tennessee, Walker Branch Watershed, Tennessee, and Bickford Watershed, Massachusetts

1955-61:At least 26 aircraft nuclear propulsion tests, Air Force, National Reactor Testing Station, Idaho

1955:2 atmospheric uranium hexafluoride releases, AEC, Paducah Gaseous Diffusion Plant, Kentucky

1957:Fuel element burn tests, Air Force, National Reactor Testing Station, Idaho

1958:At least 9 fission product field release tests, Air Force, National Reactor Testing Station, Idaho, and Dugway Proving Grounds, Utah

1959-66:Kiwi space program reactor tests, Air Force/AEC/Los Alamos, Nevada Test Site

1960:Organic moderated solvent burning experiment, AEC, Idaho National Engineering Laboratory, Idaho

1962:Project Chariot related erosion and weathering tests, U.S. Geological Survey, Cape Thompson, Alaska

1962-63:2 iodine-131 air and soil dispersion tests, AEC, Hanford, Washington

Appendix I
Documented Federal Environmental
Tests/Releases 1944-77

1962-64:3 series of special power excursion reactor tests, AEC, Idaho National Engineering Laboratory, Idaho

1963-68:24 controlled environmental radioiodine tests, AEC, Idaho National Engineering Laboratory, Idaho

1964-66:2 series of nuclear auxiliary power tests, Idaho National Engineering Laboratory, Idaho

1964-66:Tracer experiments on lichens, AEC/Hanford, Anaktuvuk Pass, Alaska

1965:Kiwi space program reactor transient nuclear test, Air Force/Los Alamos/U.S. Public Health Service, Nevada Test Site

1967-69:4 pollutant relative diffusion tests, National Oceanic and Atmospheric Administration (NOAA)/AEC, Idaho National Engineering Laboratory, Idaho

1968-70:Experimental cloud exposure study, AEC, Idaho National Engineering Laboratory, Idaho

1968-77:Controlled environmental release test series, AEC, Idaho National Engineering Laboratory, Idaho

1971-72:Long distance diffusion tests, NOAA/AEC, Idaho National Engineering Laboratory, Idaho

1974:2 atmospheric uranium hexafluoride releases, AEC, Paducah Gaseous Diffusion Plant, Kentucky

1976:57 uranium hexafluoride outleakage tests, K-25 Gaseous Diffusion Plant, Oak Ridge, Tennessee

Undated:8 loss-of-fluid tests, Organization for Economic Cooperation and Development, Idaho National Engineering Laboratory, Idaho

Sources: Nuclear Health and Safety: Radiation Events at DOE's Idaho National Engineering Laboratory (GAO/RCED-92-64FS, Jan. 13, 1992) Nuclear Health and Safety: Examples of Post World War II Radiation Releases at U.S. Nuclear Sites (GAO/RCED-94-51FS, Nov. 24, 1993); Nuclear Health and Safety: Sites Used for Disposal of Radioactive Waste in Alaska (GAO/RCED-94-130FS, July 6, 1994) Advisory Committee on Human Radiation Experiments Final Report (Oct. 1995); Human Radiation Experiments: The Department of Energy Roadmap to the Story and the Records (DOE/EH-0445, Feb. 1995); "Summary of Radiological Warfare Testing at Dugway Proving Grounds, 1949-52," undated DOD abstract.

Selected Recent GAO Reports Addressing EPA's Environmental Oversight and DOD's and DOE's Environmental Compliance

Nuclear Waste: Management and Technical Problems Continue to Delay Characterizing Hanford's Tank Waste (GAO/RCED-96-56, Jan. 26, 1996).

Department of Energy: Savings From Deactivating Facilities Can Be Better Estimated (GAO/RCED-95-183, July 7, 1995).

Department of Energy: National Priorities Needed for Meeting Environmental Agreement (GAO/RCED-95-1, Mar. 3, 1995).

Nuclear Cleanup: Difficulties in Coordinating Activities Under Two Environmental Laws (GAO/RCED-95-66, Dec. 22, 1994).

Environment: DOD's New Environmental Security Strategy Faces Barriers (GAO/NSIAD-94-142, Sept. 30, 1994).

Nuclear Health and Safety: Consensus on Acceptable Radiation Risk to the Public is Lacking (GAO/RCED-94-190, Sept. 19, 1994).

Environmental Cleanup: Better Data Needed for Radioactivity Contaminated Defense Sites (GAO/NSIAD-94-168, Aug. 24, 1994).

Environmental Cleanup: Too Many High Priority Sites Impede DOD's Program (GAO/NSIAD-94-133, Apr. 21, 1994).

Federal Facilities: Agencies Slow to Define the Scope and Cost of Hazardous Waste Site Cleanups (GAO/RCED-94-73, Apr. 15, 1994).

Pollution Prevention: EPA Should Reexamine the Objectives and Sustainability of State Programs (GAO/PEMD-94-8, Jan. 25, 1994).

Air Pollution: Progress and Problems In Implementing Selected Aspects of the Clean Air Act Amendments of 1990 (GAO/T-RCED-94-68, Oct. 29, 1993).

Environmental Enforcement: EPA Cannot Ensure the Accuracy of Self-Reported Compliance Monitoring Data (GAO/RCED-93-21, Mar. 31, 1993).

Environmental Enforcement: Alternative Enforcement Organizations for EPA (GAO/RCED-92-107, Apr. 14, 1992).

Environmental Enforcement: EPA Needs a Better Strategy to Manage Its Cross-Media Information (GAO/IMTEC-92-14, Apr. 2, 1992).

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015

or visit:

Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000 or by using fax number (301) 258-4066, or TDD (301) 413-0006.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

**United States
General Accounting Office
Washington, D.C. 20548-0001**

**Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100**

**Official Business
Penalty for Private Use \$300**

Address Correction Requested
