



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

December 1, 1977

MEMORANDUM FOR: Chairman Hendrie

FROM: Lee V. Gossick
Executive Director for Operations

SUBJECT: CHAIRMAN UDALL AND CONGRESSMAN TSONGAS' LETTER
REGARDING MY TESTIMONY BEFORE THE SUBCOMMITTEE
ON JULY 29, 1977

I wish to give you my response to the charge in the November 15, 1977, letter from Chairman Udall and Congressman Tsongas that I seriously misrepresented the facts to the Subcommittee by suggesting, in my answers to questions during the July 29, 1977 Subcommittee hearing, that there is no evidence of a diversion at Apollo. They have asked you for an explanation of my failure to present "an accurate description of the current understanding of the Apollo matter."

Because I was personally unfamiliar with the circumstances surrounding the Apollo-NUMEC situation and so told the Subcommittee, because the Congress and the Subcommittee were given the basic information that NRC could bring to bear on the matter, and because I have testified before the Subcommittee and the Congress to the best of my knowledge on this matter, the charge of misrepresentation of the facts is unfounded, and, I believe, unfair.

As you know, I appeared before the Subcommittee on July 29, 1977, to testify on the broad allegations of James Conran, regarding our safeguards program. One such allegation was that there was information in government files relating to a possible diversion of nuclear material from the Apollo-NUMEC facility in the mid-1960's, and that this information had not been adequately factored into NRC's safeguards program.

During the question and answer session that followed presentation of prepared testimony, the Apollo-NUMEC matter was the subject of two questions to me. Chairman Udall referenced the sensitive nature of the Apollo-NUMEC situation and asked whom he should question to find out "if a diversion occurred" (Transcript, page 56). In response, I concurred in the approach recommended by another witness that the Subcommittee query the CIA, the FBI, the GAO, the Joint Committee on Atomic Energy and the principals of the NUMEC company. Later, Representative Tsongas asked whether the circumstances surrounding the Apollo-NUMEC matter would lead "a reasonable person to wonder" whether nuclear material had been stolen (Transcript, page 88). To that question I responded by stating that I was not familiar with the Apollo-NUMEC circumstances.

Chairman Udall and Congressman Tsongas note their disagreement with what they view as an implication in my response that the possibility of a diversion at Apollo was beyond the scope of my concerns. I certainly intended no such implication. It is my view that information on any actual diversion, whether it occurred in the mid-sixties when safeguards requirements were essentially non-existent or at any later time, would be information that the NRC should certainly consider and evaluate against today's safeguards program requirements.

Chairman Udall and Congressman Tsongas state their belief that it was a "serious misrepresentation of the facts to suggest," by my testimony, "that there is no evidence of a diversion." In response to Mr. Tsongas, my exact statement was that "we have no evidence that a significant amount of special nuclear material has been stolen." That conclusion-- that we have no evidence of a diversion--was indeed the intent of my testimony. My answer to Mr. Tsongas' question, stating that conclusion, was based on my own knowledge and on my understanding of the Commission's conclusions in the light of the information that they had been given in the briefings by the CIA and ERDA on the Apollo matter.

As the Subcommittee knew at the July 29 hearing (NRC Task Force Report on the Allegations of James Conran, pp. 4-13 thru 4-15, provided to the Subcommittee on May 25, 1977; also Transcript, page 60), the Commission had received briefings from the Executive Branch in February 1976 on Apollo-NUMEC. But as I explained to Chairman Dingell's Subcommittee on August 8, I was not present at those briefings.

The following is an excerpt from the hearings on Oversight of NRC and ERDA Nuclear "MUF" Data, Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, on August 8, 1977.

Mr. Gossick. I have not seen the material, Mr. Ward. [information held by other agencies on the question of diversion from Apollo-NUMEC.]

Mr. Ward. Have you been briefed?

Mr. Gossick. I have not.

Mr. Ward. You have not been briefed?

Mr. Gossick. I have not, the Commission was briefed on this in February 1976 by the Executive Branch.

Mr. Dingell. Well, that brings up this question, Mr. Gossick, do you feel your judgments here absent (a), a review of the written material, and (b), a briefing by the intelligence agencies involved, is as hard as it should be with regard to safeguards, and the mechanisms for assuring the safeguard of the material in proper form?

Mr. Gossick. Mr. Chairman, this was precisely the reason the Commission felt it necessary to be briefed fully on the matter. It was something that had occurred in the time period preceding, of course, the establishment of the NRC, but in the process of establishing the safeguards program that we have in effect and that we are increasing the stringency thereof, the Commission felt it important to know whether or not there was any factor here that might affect the measures that the Commission might wish to put in force in its safeguards program.

Mr. Dingell. Mr. Ward?

Mr. Ward. Now, the Commission has also given assurance that they believe no significant quantities have ever been diverted or stolen.

Mr. Gossick. That is correct.

Mr. Ward. But you, not having access to all of it, cannot personally give that assurance, is that correct?

Mr. Gossick. I can only say, Mr. Ward, that the statement, the view of the Commission in making the statement there was no evidence that they had that indicated any diversion had taken place, was made in full knowledge of the briefing that they had received. So while I personally was not briefed on that matter, the Commission did make and has reaffirmed that judgment, that in their view there has been no evidence to indicate that any diversion has taken place.

While Chairman Udall and Congressman Tsongas may have reached other conclusions regarding a diversion at Apollo, based on information they may have received since the July 29 hearings, I cannot agree that there is any basis for the charge that I misrepresented the facts as I knew them at the July 29 hearing, or at Mr. Dingell's hearing on August 8.

I regret that Chairman Udall and Representative Tsongas do not find my lack of information on the Apollo-NUMEC matter to be an acceptable explanation. In response, I can only say that it was the Commission's decision that I not participate in the briefings it had on this very sensitive matter, and that the briefings be attended only by Commissioners and certain senior staff officials designated by Chairman Anders.

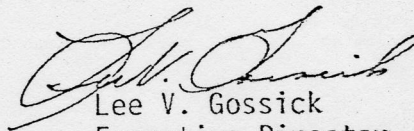
I would emphasize, however, my lack of knowledge on Apollo-NUMEC notwithstanding, that the Subcommittee and the Congress were provided with the information that NRC had on this matter. That information included:

- ° that the NRC had learned of the Apollo-NUMEC allegations and had received briefings from the Executive Branch;

- that the information provided to NRC at these briefings did not demonstrate diversion of nuclear material:
- that NRC took certain follow-up steps as a result of the briefings to ensure the accuracy of the information it received and to integrate the essence of that information into its safeguards program;
- that other identified Executive Branch agencies had the primary information on Apollo-NUMEC.

All of this was given to the Subcommittee and the Congress through my testimony and through NRC documents provided or made available to the Congress and to the Subcommittee and its Staff.*

As a final matter, I must say how deeply and personally agonizing I find the accusation that I have "seriously misrepresented the facts" to the United States Congress. I cannot ignore the recent events involving public officials accused of testifying inaccurately to the Congress, events which I believe add additional gravity to the Subcommittee's charge here. I perceive no basis for this charge, and believe I must insist on an opportunity to discuss this matter in a personal meeting with Chairman Udall and Congressman Tsongas.


Lee V. Gossick
Executive Director
for Operations

CC: Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford

*Sources: Testimony before Udall Subcommittee on July 29, 1977 and Gossick letter to Udall of August 19, 1977, response to questions 14 and 15; Testimony before Dingell Subcommittee on August 8, 1977 (pp. 53-56); Report of the NRC Task Force (pp. 4-13 thru 4-15), provided to Udall Subcommittee on May 25, 1977; References 91 and 102 to the Task Force Report, made available to Udall Subcommittee staff for review.