### OV

#### Nuclear power production is distinct from mining and processing of uranium and also waste management and disposal.

Young 05

(Steve, Whitepaper [WP-019] Environmental Regulation and Nuclear Power, http://www.unixworks.net/papers/wp-019.pdf)

Backing up both nuclear power and nuclear weapons production are an array of governmental and commercial facilities devoted to the mining and processing of uranium and the management and disposal of large quantities of wastes. Federal and private entities transport nuclear materials and waste throughout the system by rail, truck, ship, and plane. 29

#### And, the politics of power production and plutonium fuel processing are totally different, which proves our ground argument.

Young 05

(Steve, Whitepaper [WP-019] Environmental Regulation and Nuclear Power, http://www.unixworks.net/papers/wp-019.pdf)

In response to this crisis, the DOE considered an extensive rebuilding campaign, which included constructing new reactors and processing facilities and renovating existing plants. 228 Congress, however, has been selective in its funding. It readily provided money for a new production reactor, but questioned the administration's plans for a new plutonium processing plant in Idaho, especially in light of strong citizen opposition. 229 The administration dropped its plans for the Idaho plant in January 1990. 230

#### Including regulations is a limits disaster---undermines preparedness for all debates

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FERS began with the recognition that federal energy policy must result from concerted efforts in all areas dealing with energy, not the least of which was the manner in which energy is regulated by the federal government. Energy self sufficiency is improbable, if not impossible, without sensible regulatory processes, and effective regulation is necessary for public confidence. Thus, the President directed that "a comprehensive study be undertaken, in full consultation with Congress, to determine the best way to organize all energy-related regulatory activities of the government." An interagency task force was formed to study this question. With 19 different federal departments and agencies contributing, the task force spent seven months deciphering the present organizational makeup of the federal energy regulatory system, studying the need for organizational improvement, and evaluating alternatives. More than 40 agencies were found to be involved with making regulatory decisions on energy. Although only a few deal exclusively with energy, most of the 40 could significantly affect the availability and/or cost of energy. For example, in the field of gas transmission, there are five federal agencies that must act on siting and land-use issues, seven on emission and effluent issues, five on public safety issues, and one on worker health and safety issues-all before an onshore gas pipeline can be built. The complexity of energy regulation is also illustrated by the case of Standard Oil Company (Indiana), which reportedly must file about 1000 reports a year with 35 different federal agencies. Unfortunately, this example is the rule rather than the exception.

#### Including energy regulations adds five million research hours

Tugwell 88 Franklin Tugwell joined The Asia Foundation's Board of Trustees in 2010. Dr. Tugwell has served as the President and CEO of Winrock International since 1999. Previously, Dr. Tugwell was the executive director of the Heinz Endowments of Pittsburgh, the founder and president of the Environment Enterprises Assistance Fund, and as a senior consultant for International Projects and Programs at PG&E Enterprises. He served as a deputy assistant administrator at USAID (1980-1981) and as a senior analyst for the energy program at the U.S. Office of Technology Assessment (1979-1980). Dr. Tugwell was also a professor at Pomona College and an adjunct distinguished professor at the Heinz School of Carnegie Mellon University. Additionally, he serves on the Advisory Board and International Committee of the American Council on Renewable Energy and on the Joint Board of Councilors of the China-U.S. Center for Sustainable Development. He also serves on the Board of Eucord (European Cooperative for International Development). Dr. Tugwell received a PhD in political science from Columbia University. “The Energy Crisis and the American Political Economy,” ISBN 0-8047-1500-9

Finally, administering energy regulations proved a costly and cumbersome endeavor, exacting a price all citizens had to pay. As the energy specialist Paul MacAvoy has noted: "More than 300,000 firms were required to respond to controls, ranging from the three dozen major refining companies to a quarter of a million retailers of petroleum products. The respondents had to file more than half a million reports each year, which probably took more than five million man-hours to prepare, at an estimated cost alone of $80 mil- lion."64 To these expenditures must be added the additional costs to the government of collecting and processing these reports, monitor- ing compliance, and managing the complex process associated with setting forth new regulations and adjudicating disputes. All to- gether, it seems likely that the administrative costs, private and public, directly attributable to the regulatory process also exceeded $1 billion a year from 1974 to 1980.^

### limits

#### Including energy regs is too big---it’s torture for the neg

Edwards 80 Opinion in BAYOU BOUILLON CORP. v. ATLANTIC RICHFIELD CO. Court of Appeal of Louisiana, First Circuit. May 5

Comprehending the applicability and complexity of federal energy regulation necessitates both a stroll down the tortuous legislative path and a review of legal challenges so numerous as to require the establishment of a Temporary Emergency Court of Appeals.

#### That destroys education---too much to comprehend

Stafford 83 G. William is an Associate at Ross, Marsh and Foster. Review of “Federal Regulation of Energy” by William F. Fox, Jr, http://felj.org/elj/Energy%20Journals/Vol6\_No2\_1985\_Book\_Review2.pdf

It may safely be said that any effort to catalogue "the entire spectrum of federal regulation of energy"' in a single volume certainly requires an enterprising effort on the part of the author. In this regard, Mr. Willam F. Fox, Jr., an Associate Professor of Law at Catholic University of America, has undertaken an examination of a vital aspect of United States policy in Federal Regulation of Energy, published in 1983 with an annual pocket supplement available. Despite the complex nature of the subject of his work, Mr. Fox has prepared a text that provides a significant description of many aspects of federal energy regulatory policy. Initially, the book's title may prove somewhat misleading in that it approaches the subject from an historical perspective focused more on substantive than procedural issues. Although a reader gets the impression that the author at time has tried to do too much -at least from the standpoint of the energy practitioner- the historical and technical insights it offers the student of federal energy relation are valuable. Moreover; its detailed explanations of the methods used to tneet federal energy goals are useful for those in the position of initiating energy policy. This strength notwithstanding, it appears unlikely that an energy law practitioner would benefit significantly from its use, other than from its historical point of view. A general impression is that the author may have been overly ambitious in his effort to undertake the monumental task of evaluating laws, regulations, and significant judicial decisions in a single work.

#### ---Our interpretation focuses the topic on the core issue of restrictions on access to energy production.

#### (1) Oil and Gas

Institute for Energy Research 12 Petroleum (Oil)

<http://www.instituteforenergyresearch.org/energy-overview/petroleum-oil/>

The United States’ dependence on foreign sources of energy was intensified by federal government restrictions on oil and natural gas production in certain energy-rich locations here at home. Since 1982, these policies have closed about half the waters in the Gulf of Mexico to oil and gas exploration. Most of the Outer Continental Shelf (OCS) on the East and West coasts was off limits to energy exploration, and lack of infrastructure and opposition to Alaska’s OCS has forestalled access to the area’s enormous energy potential. However, Congress allowed the moratoria to most of the offshore areas to expire on September 30, 2008, providing an estimated resource of 18 billion barrels of additional crude oil. This estimate is considered extremely conservative by most petroleum experts because, historically, oil discoveries are not made until one is allowed to look. The issue, however, is far from over, particularly since the Obama Administration put a moratorium on offshore drilling after the BP oil spill from the Macondo well in the Gulf of Mexico in April 2010. While the moratorium has been rescinded, the pace of oil drilling permits approved by the Department of Interior has been extremely slow and the new offshore areas that were to be opened based on Congressional action in 2008 have essentially been put on hold. Similarly, an estimated 10.4 billion barrels of oil in a small portion of Alaska’s Arctic National Wildlife Refuge (ANWR) has been placed off limits to energy production until US government policy allows it.

#### (2) Solar Power

#### A. Home Owner Association restrictions

Gebert 07 (Laura, J.D. candidate, Barry University School of Law, A SURVEY OF SELECTED GOVERNMENT-SPONSORED ENERGY PLANS AND RECOMMENDATIONS FOR FLORIDA'S FUTURE ENERGY POLICY, 8 Barry L. Rev. 149)

California's Solar Initiative and Colorado's Amendment 37 are expensive programs funded by surcharges on energy purchasers' bills. But not every energy idea promoting the use of solar energy is as expensive or as ambitious as these. For example, a number of states have "solar siting" laws that invalidate or limit local government ordinances which restrict the placement of solar energy devices. 133 The performance of a solar system depends on properly siting the solar panels. To be effective in the northern hemisphere, solar panels must face within forty-five degrees east or west of due south; should have an optimum tilt angle equal to or within fifteen degrees of the latitude; and should receive at least six hours of solar radiation per day. 134 Because of these strict requirements, roofs and backyards have a limited number of square feet that are appropriate for the siting of solar panels and therefore owners cannot always hide solar panels from the public view. In order to install solar collectors on residential rooftops, many Americans must obtain the approval of a homeowner's association (HOA), which often restrict the use of such devices. In 2006, there were approximately 286,000 association [\*163] governed communities with more than 57 million residents in the United States. 135 These communities, through the use of restrictive covenants, often restrict or ban outright the installation of solar panels, solar water heaters, and even clotheslines. 136 Because some states have enacted laws which limit the scope of private restrictions on solar system installations, the most common restrictive covenants will usually indirectly affect the solar system by adding to its cost, decreasing its efficiency, or discouraging its use. 137 Some of the more common restrictions imposed by HOAs include requirements for prior approval, explicit restrictions on the placement of the equipment, setback requirements, height restrictions, requirements that the piping be hidden, and restrictions pertaining to architectural style. 138 In February 2000, the Department of Energy conducted a telephone survey of thirteen solar contractors. 139 The conclusions from this survey indicate that many HOAs routinely disregard strong state laws governing solar installation. 140 Unfortunately, "a substantial number of prospective solar system owners simply abandon plans for installing solar as soon as a hurdle such as association approval becomes a factor, and a substantial number of the remainder lose interest once the HOA doesn't grant immediate approval." 141 It is not surprising that homeowners are afraid of battling with the associations. Florida has a state law that expressly forbids HOAs from restricting solar panels. 142 However, in spite of this law, as many as fifty HOAs per year attempt to keep Florida residents from putting solar panels on their roofs because some neighbors think [\*164] they are ugly. 143 Since the law provides no punishment for associations that violate the statute, a homeowner who wishes to install a solar device must either file a costly lawsuit against the association, try to negotiate with the association, or risk being sued by the HOA for defying the restrictive covenant. 144 Arizona has a law invalidating restrictions that effectively prohibit solar energy devices such as panels used to heat swimming pools. 145 However, in 2003, two Avondale homeowners in the Garden Lakes subdivision accumulated about $ 100,000 in fines when their HOA argued that the panels installed on the backs of the homeowners' homes violated the community's covenants. 146 At issue in this case was the degree with which the covenant "effectively prohibited" the use of the panels. 147 The HOA argued that in order to "effectively prohibit" the devices, the covenants would have to totally preclude the use of solar devices. 148 However, the homeowners successfully argued that an HOA requirement of a costly alternative design effectively precluded the use of the device. 149 Since many state solar siting laws include vague phrases such as "effectively prohibit" or "unreasonable restrictions" without offering definitions for those phrases, an HOA may feel justified in imposing restrictions even if the legislature did not intend to permit any restrictions. 150 Although the homeowners in Arizona prevailed both at trial and on appeal (and were awarded costs and attorney's fees), the fear of high fines and attorney's fees could certainly act as a deterrent to any potential "renegade" homeowner who desires to ignore neighborhood prohibitions on solar panels. 151 The coercive effect of expensive litigation could force compliance with covenants that run counter to state law. 152 Only a few states put "teeth" in their pro-solar statutes. 153 For example, Utah provides that "the land use authority may refuse to approve or renew any . . . subdivision plan . . . if deed restrictions, covenants, or similar binding agreements running [\*165] with the land . . . prohibit or have the effect of prohibiting reasonably sited and designed solar collectors, clotheslines, or other energy devices based on renewable resources from being installed." 154 The Utah statute provides as "punishment" for prohibitions on solar collectors the potential non-approval of a subdivision plan. 155 However, it does not make non-approval mandatory, nor does it protect or provide a remedy for the homeowner who is targeted by neighbors more concerned with aesthetics than with the environment. 156 The vague wording of the Utah statute is not unusual. 157 Of the state statutes concerning the installation of solar devices which were reviewed by the Department of Energy, only California provided substantial punishment for violators of the statutes. 158 Because of the lack of case law or studies on the subject, the effects that solar siting laws have had on the use of renewable energy sources are difficult to quantify. 159 Since the survey conducted by the Department of Energy indicates that many homeowners are reluctant to challenge their HOAs, the effects of these statutes would probably be greater if they provided punishment for associations that defy the rules. 160 An outright ban on covenants restricting solar panels -- with fines imposed for violations -- seems more likely to be effective than the current statutes. However, all of the solar contractors surveyed by the Department of Energy were aware of the siting laws in their states. 161 In fact, one contractor indicated that about fifty percent of the solar systems installed in certain areas would not be allowed if the law was not in place. 162 This indicates that, although the laws are weaker than many solar advocates would like, they do have the positive effect of increasing the use of solar energy. Ironically, while much of what state governments do to encourage the use of alternative energy involves legislation designed to make solar technology affordable to the average homeowner, very little attention has been given to encouraging the use of free solar energy. Only Florida and Utah specifically protect the use of clotheslines as a means of drying laundry. 163 Even in those states, local lawmakers and HOAs continue to defy state law by banning the drying of laundry outside. 164 [\*166] In California, clotheslines that can be seen from neighboring yards are banned by virtually all 35,000 subdivisions and condominium complexes governed by HOAs. 165 Richard Monson, president of the California Association of Homeowners Associations, has been quoted as saying, "When you see (clothes drying) you think of slums. You think of low-class areas. You think of poverty." 166 Undoubtedly, this attitude developed from the deep-rooted historical sentiment that electric clothes dryers were expensive items, only affordable by the wealthy. However, electric clothes dryers are commonplace in today's society. It is therefore unlikely that a resident of an expensive gated community would automatically associate her neighbor hanging his designer jeans outside with poverty and low-quality living conditions. 167 Mr. Monson has suggested that the sight of laundry drying outside will decrease the value of homes in a neighborhood by fifteen percent. 168 It is true that the median price of a home in San Francisco, California, is much higher than an equivalent home in Salt Lake City, Utah or Ft. Lauderdale, Florida. 169 Determining whether this disparity in housing prices is due to clothesline use in Utah and Florida would involve analysis that is beyond the scope of this paper, but the possibility that the difference in home prices is due solely to the statutes permitting the use of clotheslines in Utah and Florida seems far-fetched. It would be naive to assume that legislation allowing clothesline use would encourage a significant number of people to start drying their clothing outside. Electric clothes dryers are convenient and most Americans are likely to continue using them. To a large extent, such legislation would be symbolic. However, by passing and publicizing such legislation, a state could show its commitment to the use of clean, renewable solar energy without spending state funds on rebates, loans, or other expensive promotions. Homeowners are not always powerless against unreasonable or illegal restrictions put in place by local governments or community associations. Congress reacted to similar restrictions that impair reception of television signals by implementing the Over-the-Air-Reception Devices (OTARD) rule. 170 This rule pre-empts government, landlord, or HOA restrictions on the placement of television antennae, broadband radio service antennae, and small satellite dishes. 171 Only [\*167] restrictions that address legitimate safety concerns or historical preservation are allowed, and these must be clearly articulated and explained within the text of the rule. 172 Furthermore, the burden of proving a valid restriction falls upon the local government or association seeking enforcement. 173 Even if the restriction is found to be valid, the antenna user has twenty-one days to remove the antenna without the imposition of any fines or attorney's fees (unless the user's claim was frivolous). 174 The Federal Communications Commission (FCC) maintains a website which describes the rule, answers frequently asked questions, and provides a toll-free reporting number for antenna users wishing to report invalid restrictions. 175 By taking a similar interest in invalidating restrictions against solar energy use, the federal government could empower to defy illegal bans imposed by HOAs.

B. Public Lands

Bump-Grist-7/24/12 U.S. lays out the welcome mat for solar on public lands

<http://grist.org/politics/u-s-lays-out-the-welcome-mat-for-solar-on-public-lands/>

The Department of the Interior today announced plans to make that practice far more common throughout the West. The New York Times reports: After more than two years of study and public comment, the Department of Interior on Tuesday identified 17 sites on 285,000 acres of public lands across six Southwestern states as prime spots for development of solar energy. Agency officials said the government would fast-track applications for large-scale solar energy installations at those sites in the hope of speeding construction of thousands of megawatts of renewable, non-polluting electricity generation. … But officials said they were fencing off more than 78 million acres of public land from solar development because the areas have less solar energy potential, do not have immediate access to transmission lines or pose a threat to important archaeological or cultural sites, endangered species, scarce water resources or other environmental values if developed.

#### (3) Offshore Wind

Rigano-J.D. candidate Hofstra-10 39 Hofstra L. Rev. 201

NOTE: THE SOLUTION TO THE UNITED STATES' ENERGY TROUBLES IS BLOWING IN THE WIND

E. The "Offshore Wind Energy Act" 283 The overall procedure regarding offshore wind energy is inefficient. So far, the claims brought against Cape Wind are not meritorious. 284 Further legislation should be enacted to: (1) simplify and expedite the permit process of renewable energy in the form of offshore wind; and (2) prevent abuse of the court system. This Note proposes legislation, similar to the 2005 Act for LNG, so that offshore wind turbines are not just a potential source of renewable energy, but become a reality. The proposed legislation would deter opponents of renewable energy projects from wasting the time and the resources of the court system. Congress should pass an "Offshore Wind Energy Act" (the "OWEA") that grants the Bureau of Ocean Energy Management (the "BOEM") exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an offshore wind farm. 285 The BOEM is the federal agency that should bear this responsibility because: (1) it recently issued federal regulations for the siting of offshore wind farms, 286 and (2) according to the Department of the Interior, it is the agency responsible for effectively managing offshore wind energy. 287 Offshore wind energy is in its infant stages as there are currently no offshore wind farms in the United States. 288 Congress rationalized [\*233] passing the FERC to take over siting of LNG terminals because at the time, it was in a very early developing period and therefore needed to be protected and regulated by the federal government. 289 Federal preemption, like the siting of LNG terminals, is what must happen for offshore wind farms to prosper. As long as there are many fragmented federal and state agencies that are responsible for issuing permits, it may take another nine years to get a turbine in the water. 290 The OWEA would significantly simplify the permit process. Developers would need to work only with one lead agency, the BOEM, and would not have to deal with different organizations at each respective level of government. Furthermore, a lead agency would not deter potential developers from offshore wind energy because the approval process would be less elaborate.