

In addition, there are new technologies benefiting all Americans developed at Great Plains on a regular basis. Among the most recent are the production of the rare gases krypton and xenon, and using synthetic gas to produce anhydrous ammonia and ammonium sulfate, two commercial fertilizers.

I am hopeful that the commissioners at FERC will see this ruling for what it is—an administrative law judge run amok, believing he knows more than the agency, industry, and consumers working with this project on a daily basis. If this ruling were to stand, Great Plains would likely have to shut its doors forever. This is simply not right. It is time the absurdity of this decision was brought to full attention of this body and the American people.

What we have here is sophisticated parties entering into contracts and making investments based upon those contracts. Then along comes an administrative law judge who retroactively nullifies the express agreements and imposes his judgement. In the process, he single-handedly destroys the viability of the entire project.

I would like to outline the most disturbing aspects of this ruling, if it were accepted by FERC.

It requires the plant to sell the product to the pipelines at well-below the cost of producing the gas. The judge's ruling would set the purchase price at almost \$1 per dekatherm below the cost of production and resulting in a loss of \$55 million in 1995. This is totally unacceptable.

The ruling would also require the pipeline companies to retroactively refund customers to the tune of \$280 million. This cost would no doubt be passed on to the plant itself, further jeopardizing Great Plains' ability to meet its bottom line.

Amazingly, the judge provided more relief than was even sought by the consumers. The judge strayed far from the matters at hand into issues of production capacity at the plant. He ruled that the pipeline companies would no longer have to receive what is produced at the plant—around 160 million barrels per day. Rather, they would only have to receive what was expected to be produced at the plant—131 million barrels per day.

If FERC were to approve the ruling, it would completely set-aside FERC's own Opinion 119 agreement between Great Plains and the four pipeline purchasers which allowed the project to go forward in the first place. Opinion 119 was the basis for further negotiations enabling Great Plains to be sold to the Dakota Gasification Co., a subsidiary of Basin Electric, with a profit-sharing arrangement with the Department of Energy. To abandon Opinion 119 at this time would be a disservice to all parties involved—especially when you consider that it was the consumer representatives themselves that drafted the pricing formula of these gas purchase agreements.

This issue will be decided by FERC in the near future. I urge each Member of that body to give this matter their most careful attention. Their decision will have ramifications on the Department of Energy, my State of North Dakota, and the energy future of this Nation.

## VETO OVERRIDE ON THE INTERIOR APPROPRIATIONS BILL

HON. CHET EDWARDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Friday, January 26, 1996*

Mr. EDWARDS. Mr. Speaker, on July 18, 1995, I voted for the fiscal year 1996 Interior appropriations bill. While I did not agree with everything in the bill, I strongly supported the reforms that were included on the Endangered Species Act. Specifically, the bill prohibited the listing of new endangered species until the Endangered Species Act is reauthorized. Also, the bill prohibited the use of funds to designate critical habitat for listed species. As a defender of private property rights, I also supported the provision that defunded the National Biological Survey.

When the House considered the conference report on this bill in December, again I supported the bill because of these important provisions. That measure passed the House on December 13, 1995 by a vote of 244–181.

Unfortunately, President Clinton vetoed the Interior appropriations bill. I was disappointed that these important provisions were not signed into law.

When the House voted to override the veto in January 1996, I fully intended to continue my support for the bill by voting to override that veto. However, when I checked the CONGRESSIONAL RECORD, I realized that I had mistakenly voted to sustain the veto. This vote was in error. I want to make it clear for the record that I support this legislation and I intended to vote to override the President's veto.

I have consistently been in favor of making changes in the current Endangered Species Act [ESA]. I am a cosponsor of H.R. 2275, a bill supported by the Texas Farm Bureau that would make commonsense changes to the existing law.

In 1994, when central Texas was under fire from the U.S. Fish and Wildlife Service over designating critical habitat for the golden cheeked warbler, I was a leader in forcing the Service to abandon the plan. I believe that this situation demonstrates the weaknesses of the ESA, and shows how desperately reform is needed.

I have also been a vocal critic of the National Biological Survey. On June 22, 1994, I voted in favor of the Allard amendment to the Interior appropriations bill. This amendment, which would have eliminated all funds for the National Biological Survey, did not pass. This year opponents of the NBS like me were pleased to see that this program was targeted for elimination. While I appreciate the recent reforms in this program, I am still not convinced it is a prudent use of taxpayers' money.

When the issues regarding private property rights come up for votes in 1996, I will vote to protect those rights as I have consistently done in years past.

## TRIBUTE TO THE SOUTH BRONX MENTAL HEALTH COUNCIL, INC., FIFTH PATIENT RECOGNITION DAY

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, January 26, 1996*

Mr. SERRANO. Mr. Speaker, I rise to pay tribute to the South Bronx Mental Health Council, Inc., which today will celebrate its fifth Patient Recognition Day.

Since 1968, the South Bronx Mental Health Council, previously named the Lincoln Community Mental Health Center, has provided treatment and mental health services to members of our community.

A community-based organization, the council offers counseling and mental health treatment for individuals of all age groups, including children, as well as satellite programs at local schools and community support programs.

On this special occasion, council personnel and patients will be joined by family and friends to recognize the achievements made by patients during the past year. With the support of the council's dedicated personnel, many of these patients have made special efforts to overcome their challenges and accomplished specific goals.

Mr. Speaker, I ask my colleagues to join me in saluting our friends at the South Bronx Mental Health Council and in recognizing their outstanding achievements on their fifth Patient Recognition Day.

## INTRODUCTION OF LEGISLATION

HON. THOMAS J. BLILEY, JR.

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, January 26, 1996*

Mr. BLILEY. Mr. Speaker, I would like to insert for the RECORD the text of flow control legislation which may be brought up on the Suspension Calendar on Tuesday, January 30.

### SECTION. 1. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL MUNICIPAL SOLID WASTE FLOW CONTROL.

(a) AMENDMENT OF SUBTITLE D.—Subtitle D of the Solid Waste Disposal Act is amended by adding after section 4011 the following new section:

#### “SEC. 4011. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL GOVERNMENT CONTROL OVER MOVEMENT OF MUNI- CIPAL SOLID WASTE AND RECY- CLABLE MATERIALS.

“(a) FLOW CONTROL AUTHORITY FOR FACILITIES DESIGNATED AS OF MAY 16, 1994.—Any State or political subdivision thereof is authorized to exercise flow control authority to direct the movement of municipal solid waste, and recyclable materials voluntarily relinquished by the owner or generator thereof, to particular waste management facilities, or facilities for recyclable materials, designated as of May 16, 1994, if each of the following conditions are met:

“(1) The waste and recyclable materials are generated within the jurisdictional boundaries of such State or political subdivision, determined as of May 16, 1994.

“(2) Such flow control authority is imposed through the adoption or execution of a law,

ordinance, regulation, resolution, or other legally binding provision or legally binding official act of the State or political subdivision that—

“(A) was in effect on May 16, 1994,

“(B) was in effect prior to the issuance of an injunction or other order by a court based on a ruling that such law, ordinance, regulation, resolution, or other legally binding provision or official act violated the Commerce Clause of the United States Constitution, or

“(C) was in effect immediately prior to suspension thereof by legislative or official administrative action of the State or political subdivision expressly because of the existence of a court order of the type described in subparagraph (B) issued by a court of the same State or Federal judicial circuit.

“(3) The State or a political subdivision thereof has, for one or more of such designated facilities, in accordance with paragraph (2), on or before May 16, 1994, either—

“(A) presented eligible bonds for sale, or

“(B) executed a legally binding contract or agreement that obligates it to deliver a minimum quantity of waste or recyclable materials to one or more such designated waste management facilities or facilities for recyclable materials and that obligates it to pay for that minimum quantity of waste or recyclable materials even if the stated minimum quantity of such waste or recyclable materials is not delivered within a required time-frame.

“(b) WASTE STREAM SUBJECT TO FLOW CONTROL.—The flow control authority of subsection (a) shall only permit the exercise of flow control authority to any designated facility of the specific classes or categories of municipal solid waste and voluntarily relinquished recyclable materials to which flow control authority was applicable on May 16, 1994, or immediately before the effective date of an injunction or court order referred to in subsection (a)(2)(B) or an action referred to in subsection (a)(2)(C) and—

“(1) in the case of any designated waste management facility or facility for recyclable materials that was in operation as of May 16, 1994, only if the facility concerned received municipal solid waste or recyclable materials in those classes or categories within 2 years prior to May 16, 1994, or the effective date of such injunction or other court order or action,

“(2) in the case of any designated waste management facility or facility for recyclable materials that was not yet in operation as of May 16, 1994, only of the classes or categories that were clearly identified by the State or political subdivision as of May 16, 1994, to be flow controlled to such facility, and

“(3) only to the extent of the maximum volume authorized by State permit to be disposed at the waste management facility or processed at the facility for recyclable materials.

If specific classes or categories of municipal solid waste or recyclable materials were not clearly identified, paragraph (2) shall apply only to municipal solid waste generated by households, including single family residences and multi-family residences of up to 4 units.

“(c) DURATION OF FLOW CONTROL AUTHORITY.—Flow control authority may be exercised pursuant to this section to any facility or facilities only until the later of the following:

“(1) The expiration date of the bond referred to in subsection (a)(3)(A).

“(2) The expiration date of the contract or agreement referred to in subsection (a)(3)(B).

“(3) The adjusted expiration date of a bond issued for a qualified environmental retrofit. Such expiration dates shall be determined based upon the terms and provisions of the

bond or contract in effect on May 16, 1994. In the case of a contract described in subsection (a)(3)(B) that has no specified expiration date, for purposes of paragraph (2) the expiration date shall be treated as the first date that the State or political subdivision that is a party to the contract can withdraw from its responsibilities under the contract without being in default thereunder and without substantial penalty or other substantial legal sanction.

“(d) MANDATORY OPT-OUT FOR GENERATORS AND TRANSPORTERS.—Notwithstanding any other provision of this section, no State or political subdivision may require any generator or transporter of municipal solid waste or recyclable materials to transport such waste or materials, or deliver such waste or materials for transportation, to a facility that is listed on the National Priorities List established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 unless such State or political subdivision or the owner or operator of such facility has adequately indemnified the generator or transporter against all liability under that Act with respect to such waste or materials.

“(e) EFFECT ON EXISTING LAWS.—

“(1) ENVIRONMENTAL LAWS.—Nothing in this section shall be interpreted or construed to have any effect on any other law relating to the protection of human health and the environment, or the management of municipal solid waste or recyclable materials.

“(2) STATE LAW.—Nothing in this section shall be interpreted to authorize a political subdivision to exercise the flow control authority granted by this section in a manner inconsistent with State law.

“(3) OWNERSHIP OF RECYCLABLE MATERIALS.—Nothing in this section shall authorize any State or political subdivision to require any generator or owner of recyclable materials to transfer any recyclable materials to such State or political subdivision, nor shall prohibit any persons from selling, purchasing, accepting, conveying, or transporting any recyclable materials, unless the generator or owner voluntarily makes such recyclable materials available to the State or political subdivision and relinquishes any rights to, or ownership of, such recyclable materials.

“(f) FACILITIES NOT QUALIFIED FOR FLOW CONTROL.—No flow control authority may be exercised under the provisions of this section to direct solid waste or recyclable materials to any facility pursuant to an ordinance if—

“(1) the ordinance was determined to be unconstitutional by a State or Federal court in October of 1994;

“(2) the facility is located over a sole source aquifer, within 5 miles of a public beach, and within 25 miles of a city with a population of more than 5,000,000; and

“(3) the facility is not fully permitted and operating in complete official compliance with all Federal, State, and local environmental regulations.

“(g) LIMITATION ON REVENUE.—A State or qualified political subdivision may exercise the flow control authority granted in this section only if the State or qualified political subdivision limits the use of any of the revenues it derives from the exercise of such authority for the payment of one or more of the following:

“(1) Principal and interest on any eligible bond.

“(2) Principal and interest on a bond issued for a qualified environmental retrofit.

“(3) Payments required by the terms of a contract referred to in subsection (a)(3)(B).

“(4) Other expenses necessary for the operation and maintenance of designated facilities and other integral facilities necessary for the operation and maintenance of such

designated facilities that are identified by the same eligible bond.

“(5) To the extent not covered by paragraphs (1) through (4), expenses for recycling, composting, and household hazardous waste activities in which the State or political subdivision was engaged before May 16, 1994, and for which the State or political subdivision, after periodic evaluation, beginning no later than one year after the enactment of this section, finds that there is no comparable qualified private sector service provider available. Such periodic evaluation shall be based on public notice and open competition. The amount and nature of payments described in this paragraph shall be fully disclosed to the public annually.

“(h) INTERIM CONTRACTS.—A lawful, legally binding contract under State law that was entered into during the period—

“(1) before November 10, 1995, and after the effective date of any applicable final court order no longer subject to judicial review specifically invalidating the flow control authority of such State or political subdivision, or

“(2) after such State or political subdivision refrained pursuant to legislative or official administrative action from enforcing flow control authority and before the effective date on which it resumes enforcement of flow control authority after enactment of this section, shall be fully enforceable in accordance with State law.

“(i) CONTROL OF WASTE MOVEMENT TO CERTAIN PERMITTED FACILITIES.—No State may exercise any authority that is granted by Congress after the date of enactment of this section to control the interstate movement of solid waste in a manner that prohibits or limits the receipt of out-of-State municipal solid waste at any waste management facility that meets both of the following conditions:

“(1) The facility has been granted a permit under State law to receive municipal solid waste for combustion or disposal.

“(2) The State or its political subdivision within which the facility is located has exercised any flow control authority provided under this section to prohibit or limit the receipt by the facility of municipal solid waste that is generated within the State or its political subdivision.

Nothing in this subsection is intended to have any effect on the exercise of flow control authority granted by this section except to the extent that such exercise is inconsistent with State law.

“(j) AREAS WITH PRE-1984 FLOW CONTROL.—

“(1) GENERAL AUTHORITY.—A State that on or before January 1, 1984—

“(A) adopted regulations under a State law that required or directed transportation, management, or disposal of municipal solid waste from residential, commercial, institutional, or industrial sources (as defined under State law) to specifically identified waste management facilities, and applied those regulations to every political subdivision of the State, and

“(B) subjected such waste management facilities to the jurisdiction of a State public utilities commission,

may exercise flow control authority over municipal solid waste in accordance with the other provisions of this section and may exercise the additional flow control authority described in paragraph (2).

“(2) ADDITIONAL FLOW CONTROL AUTHORITY.—A State that meets the requirements of paragraph (1) and any political subdivision thereof may exercise flow control authority over all classes and categories of municipal solid waste that were subject to flow control by such State or political subdivision thereof

on May 16, 1994, by directing it from any existing waste management facility that was designated as of May 16, 1994, or any proposed waste management facility in the State to any other such existing or proposed waste management facility in the State without regard to whether the political subdivision within which the municipal solid waste is generated had designated the particular waste management facility or had issued a bond or entered into a contract referred to in subsection (a)(3)(A) or (B), respectively.

“(3) DEFINITION.—For purposes of this subsection, the term ‘proposed waste management facility’ means a waste management facility that was specifically identified in a waste management plan prior to May 16, 1994, and for the construction of which—

“(A) revenue bonds were issued and outstanding as of May 16, 1994,

“(B) additional financing with revenue bonds was required as of the date of enactment of this section to complete construction, and

“(C) a permit had been issued prior to December 31, 1994.

“(4) LIMITATION OF AUTHORITY.—The additional flow control authority granted by paragraph (2) may be exercised to—

“(A) any facility described in paragraph (2) for up to 5 years after the date of enactment of this section, and

“(B) after 5 years after enactment of this section, only to those facilities and only with respect to the classes, categories, and geographic origin of waste directed to such facilities specifically identified by the State in a public notice issued within 5 years after enactment of this section.

“(5) DURATION OF AUTHORITY.—The authority to direct municipal solid waste to any facility pursuant to this subsection shall terminate with regard to such facility in accordance with subsection (c).

“(k) SAVINGS CLAUSE.—Nothing in this section is intended to have any effect on the authority of any State or political subdivision to franchise, license, or contract for municipal solid waste collection, processing, or disposal.

“(l) APPLICATION OF FLOW CONTROL AUTHORITY.—The flow control authority granted by this section shall be exercised in a manner that ensures that it is applied to the public sector if it is applied to the private sector.

“(m) PROMOTION OF RECYCLING.—The Congress finds that, in order to promote recycling, anyone engaged in recycling activities should strive to meet applicable standards for the reuse of recyclable materials.

“(n) EFFECTIVE DATE.—The provisions of this section shall take effect with respect to the exercise by any State or political subdivision of flow control authority on or after the date of enactment of this section, and such provisions shall also apply to the exercise by any State or political subdivision of flow control authority before such date of enactment unless the exercise of such authority has been declared unconstitutional by a final judicial decision that is no longer subject to judicial review.

“(o) DEFINITIONS.—For the purposes of this section—

“(1) ADJUSTED EXPIRATION DATE.—The term ‘adjusted expiration date’ means, with respect to a bond issued for a qualified environmental retrofit, the earlier of the final

maturity date of such bond or 15 years after the date of issuance of such bonds.

“(2) BOND ISSUED FOR A QUALIFIED ENVIRONMENTAL RETROFIT.—The term ‘bond issued for a qualified environmental retrofit’ means a revenue or general obligation bond, the proceeds of which are dedicated to financing the retrofitting of a resource recovery facility or a municipal solid waste incinerator necessary to comply with section 129 of the Clean Air Act, and exclusively used for such purposes, provided that such bond is presented for sale before the expiration date of the bond or contract referred to in subsection (a)(3)(A) and (B) respectively that is applicable to such facility and no later than December 31, 1999.

“(3) DESIGNATE; DESIGNATION.—The terms ‘designate’, ‘designated’, ‘designating’, and ‘designation’ mean a requirement of a State or political subdivision, and the act of a State or political subdivision, individually or collectively, to require that all or any portion of the municipal solid waste or recyclable materials that is generated within the boundaries of the State or any political subdivision be delivered to one or more waste management facilities or facilities for recyclable materials identified by the State or a political subdivision thereof. The term ‘designation’ includes bond covenants, official statements, or other official financing documents issued by a political subdivision issuing an eligible bond in which it identified a specific waste management facility as being the subject of such bond and the requisite facility for receipt of municipal solid waste or recyclable materials generated within the jurisdictional boundaries of that political subdivision.

“(4) ELIGIBLE BOND.—The term ‘eligible bond’ means—

“(A) a revenue bond specifically to finance one or more designated waste management facilities, facilities for recyclable materials, or specifically and directly related assets, development or finance costs, as evidenced by the bond documents; or

“(B) a general obligation bond, the proceeds of which were used solely to finance one or more designated waste management facilities, facilities for recyclable materials, or specifically and directly related assets, development or finance costs, as evidenced by the bond documents.

“(5) FLOW CONTROL AUTHORITY.—The term ‘flow control authority’ means the authority to control the movement of municipal solid waste or voluntarily relinquished recyclable materials and direct such solid waste or voluntarily relinquished recyclable materials to one or more designated waste management facilities or facilities for recyclable materials within the boundaries of a State or within the boundaries of a political subdivision of a State, as in effect on May 16, 1994.

“(6) MUNICIPAL SOLID WASTE.—The term ‘municipal solid waste’ means any solid waste generated by the general public or by households, including single residences and multifamily residences, and from commercial, institutional, and industrial sources, to the extent such waste is essentially the same as waste normally generated by households or was collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services, consisting of paper, wood, yard waste, plastics, leather, rubber, and other combustible materials and noncombustible materials such as

metal and glass, including residue remaining after recyclable materials have been separated from waste destined for disposal, and including waste material removed from a septic tank, seepage pit, or cesspool (other than from portable toilets), except that the term does not include any of the following:

“(A) Any waste identified or listed as a hazardous waste under section 3001 of this Act or waste regulated under the Toxic Substances Control Act.

“(B) Any waste, including contaminated soil and debris, resulting from—

“(i) response or remedial action taken under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

“(ii) any corrective action taken under this Act, or

“(iii) any corrective action taken under any comparable State statute.

“(C) Construction and demolition debris.

“(D) Medical waste listed in section 11002 of this Act.

“(E) Industrial waste generated by manufacturing or industrial processes, including waste generated during scrap processing and scrap recycling.

“(F) Recyclable materials.

“(G) Sludge.

“(7) POLITICAL SUBDIVISION.—The term ‘political subdivision’ means a city, town, borough, county, parish, district, or public service authority or other public body created by or pursuant to State law with authority to present for sale an eligible bond or to exercise flow control authority.

“(8) RECYCLE AND RECYCLING.—The terms ‘recycle’ and ‘recycling’ mean—

“(A) any process which produces any material defined as ‘recycled’ under section 1004; and

“(B) any process by which materials are diverted, separated from, or separately managed from materials otherwise destined for disposal as solid waste, by collecting, sorting, or processing for use as raw materials or feedstocks in lieu of, or in addition to, virgin materials, including petroleum, in the manufacture of usable materials or products.

“(9) RECYCLABLE MATERIALS.—The term ‘recyclable materials’ means any materials that have been separated from waste otherwise destined for disposal (either at the source of the waste or at processing facilities) or that have been managed separately from waste destined for disposal, for the purpose of recycling, reclamation, composting of organic materials such as food and yard waste, or reuse (other than for the purpose of incineration). Such term includes scrap tires to be used in resource recovery.

“(10) WASTE MANAGEMENT FACILITY.—The term ‘waste management facility’ means any facility for separating, storing, transferring, treating, processing, combusting, or disposing of municipal solid waste.”

(b) TABLE OF CONTENTS.—The table of contents for subtitle D of the Solid Waste Disposal Act is amended by adding the following new item after the item relating to section 4011:

“Sec. 4011. Congressional authorization of State and local government control over movement of municipal solid waste and recyclable materials.”