

Senator Byrd's statement indicates that in the case of minerals "not customarily sold in the form of the crude mineral products" (and which were not specifically provided for in other subparagraphs), substantially the same processes as those allowable under the "commercially marketable" test of prior law were to be allowable: In the words of the Supreme Court, depletion allowances for these minerals would be cut off "at the point where the minerals first became suitable for industrial use or consumption."³ Accordingly, Senator Byrd's explanation of the Conference Report demonstrates that the retorting process for oil shale should be held to be an allowable treatment process, and that the Service's position is in error.

Moreover, allowance of retorting as a mining process does not produce the vice at which the Gore amendment was aimed. It is clear that the intent of the Gore amendment is to prevent depletion from being computed on the *finished manufactured product*, or in other words, to eliminate from the depletion base manufacturing processes applied to mineral products which are marketable in a cruder form. The retorting process for oil shale is not a manufacturing process applied to a mineral which could be sold in a cruder form, since there is not, and in the foreseeable future cannot be, a market for oil shale rock.

APPENDIX E

IMPORT QUOTAS—QUALIFIED INPUTS

The oil import quota system is based upon Presidential Proclamation 3279 (March 10, 1959), as amended, and regulations issued by the Secretary of the Interior implementing the Proclamation. The Proclamation recited a Presidential finding that "crude oil and the principal crude oil derivatives and products are being imported in such quantities and under such circumstances as to threaten to impair the national security. * * *" The threat, as reported on February 27, 1959, in a Memorandum to the President by the Directors of the Office of Civil Defense and Mobilization, was that imports discouraged domestic exploration and development of petroleum reserves and, if unregulated, would impair the nation's productive capacity. To counter this danger, the Proclamation forbade importation of crude oil, unfinished oils, and oil products unless licensed by the Secretary of the Interior, and set forth a formula for determining the maximum level of imports that the Secretary would authorize.

The Proclamation required that import licenses be issued only to domestic refiners, and gave the Secretary discretion to allocate allowable imports among refiners in a manner "fair and equitable" in relation to "refinery inputs", a term not defined by the Proclamation.

The Secretary has implemented the Proclamation with Regulations (32A C.F.R., Ch. X) authorizing issuance of import licenses for specified percentages of "refinery inputs." The Regulations defined "refinery inputs" as including only "crude oil" and "imported unfinished oil" used as refinery feedstocks. Because of the manner in which the Regulations defined "crude oil", there is some uncertainty whether raw shale crude oil would qualify as a "crude oil" refinery input for purposes of computing the import quota of a refiner who used shale crude rather than conventionally produced crude.

The Proclamation defined "crude oil" as follows: "Crude oil" means crude petroleum as it is produced at the well-head." The Regulations adopted this definition of "crude oil" for purposes of determining refinery inputs, and thus of determining each refiner's import quota. If the phrase "as it is produced at the well-head" is construed to mean only crude oil actually produced by means of wells, shale crude oil produced by means of above-ground retorting would not qualify as a "refinery input", although shale crude oil produced from wells by in situ techniques would qualify.

If shale crude does not qualify as a "refinery input", refiners who use it rather than conventional crude as a feedstock will suffer a reduction in their import quotas. Since the quotas have substantial value, the import quota system would then be operating to penalize the value of shale crude oil, and so to discourage domestic production of shale crude. Such a result would be anomalous, since the purpose of the import quota system as stated in the Proclamation itself is to encourage increases in domestic petroleum production and productive capacity.

³ *Riddell v. Monolith Portland Cement Co.*, 371 U.S. 537.