



UNITED STATES
NUCLEAR REGULATORY COMMISSION
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MEMORANDUM FOR: Walter Schwink
Fuel Cycle Enrichment Branch
Office of Nuclear Materials Safety
and Safeguards

FROM: Martin G. Malsch
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Licensing and Regulation
Office of the General Counsel

SUBJECT: FEMA "JURISDICTION" OVER GASEOUS DIFFUSION
PLANTS FOR EMERGENCY PLANNING PURPOSES

You have requested input on FEMA's "jurisdiction" over the DOE Gaseous Diffusion Plants (GDPs) being leased to the United States Enrichment Corporation (USEC). OGC understands the question to be whether FEMA has regulatory authority to "require" that USEC prepare emergency plans for the GDP facilities. In addition, it is understood that the request includes the FEMA ability to require preparation of emergency plans by USEC in the situation where NRC is requiring emergency planning, but has not specifically requested FEMA review of the emergency plans.

President Carter established FEMA under the Reorganization Plan No. 3 of 1978, using his authority under 5 U.S.C. §§ 901 et. al. In addition, FEMA was given substantial responsibilities by Executive Order No. 12148, (July 20, 1979), and by the Disaster Relief Act of 1974 (42 USC 5121 et. al.). In general, FEMA's mission and authorities are concerned with fostering, to the maximum extent possible, cooperation in emergency planning among state, local and federal authorities, and to administer the use of federal resources for both emergency planning and disaster relief.

FEMA's regulations are contained in 44 CFR Parts 0-361. FEMA "requirements" are not imposed on entities (either private entities or state and local governments) in the same sense that NRC regulations are applicable to anyone possessing, using or owning licensed materials. Rather, FEMA operates under a consensual regime whereby it provides assistance to state and local governments, and disaster relief to private parties, only when such assistance is requested. Therefore, FEMA's "requirements" are in the nature of qualifications a state or local government, or a private individual, must meet to receive federal assistance. The federal assistance may take a variety of forms including monetary support, training, technical assistance or the providing of manpower or materials for use in an emergency. In addition, and of primary relevance to NRC licensees, is that FEMA regulations

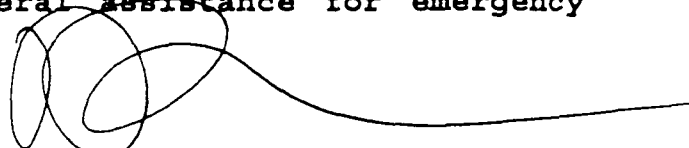
provide for review of state and local emergency plans at the request of state and local governments. The FEMA regulatory provisions specifically related to NRC licensees are discussed below.

When formal review of emergency plans is requested by the state, FEMA has requirements addressing the review and approval of emergency plans involving commercial nuclear power plants. 44 CFR Part 350. However, those provisions specifically provide that they do not apply to any NRC licensees other than commercial nuclear power reactors. 44 CFR § 350.4. In certain limited circumstances FEMA will also review a utility offsite response plan, but by its terms this ability is limited to emergency plans involving commercial nuclear power plants. 44 CFR Part 352. The only Part of FEMA's regulations directly referencing other NRC licensed facilities is 44 CFR Part 351. In those provisions, however, it is specifically stated that Part 351 does not include any requirements associated with FEMA findings and determinations on the adequacy of state and local radiological emergency preparedness. The same provision also notes that Part 351 does not set forth Federal agency responsibilities or capabilities for responding to an accident at a fixed nuclear facility. 44 CFR § 351.3. Rather, Part 351 addresses the assignments and responsibilities for federal agencies relating to support to state and local governments in emergency planning and emergency response. In addition, Part 351 provides for appropriate national and regional committees to coordinate such assistance.

The Memorandum of Understanding between the NRC and FEMA dated June 17, 1993 does not change the above situation. That agreement provides that at NRC's request or by mutual agreement of NRC and FEMA, FEMA will provide interim findings to support NRC licensing actions. These interim FEMA findings can be made separate from, but concurrent with, FEMA's Part 350 or Part 352 reviews if those reviews have not been completed. Under the subheading "Areas of Cooperation", the MOU also notes that FEMA will provide support to NRC for licensing reviews related to reactors, fuel facilities and materials licensees. However, that section also specifically provides that NRC will, substantially prior to the time a FEMA evaluation is needed, identify those fuel and materials licensees with the potential for significant accidental offsite radiological releases and will transmit a request for review to FEMA as the emergency plans are completed. Thus, the provisions of the MOU are consistent with FEMA becoming involved in reviewing emergency plans only when requested to review such plans by the state and local governments, or other federal agencies.

The Reorganization Plan No. 3 of 1978; Executive Order No. 12148, (July 20, 1979); Executive Order No. 12657 (November 18, 1988); the Disaster Relief Act of 1974 (42 USC 5121 et. al.); and FEMA's regulations in Title 44 of the Code of Federal Regulations and the June 17, 1993, Memorandum of Understanding between FEMA and NRC,

have been reviewed. No regulatory authority or requirements have been identified to indicate that FEMA has or could exercise authority to "require" emergency plans at the GDPs nor to require submission of emergency plans for mandatory review by FEMA. If USEC decides to develop an emergency plan that includes coordination with state and local governments, the state and local governments may voluntarily seek FEMA guidance and support under various provisions of FEMA's regulations. e. g. 44 CFR 351.20. FEMA could also, under the MOU, provide input to NRC's safety evaluation process if NRC requested that support. Accordingly, the applicable FEMA statutory and regulatory provisions indicate that, if NRC does not require the GDPs to develop emergency plans, it would be up to USEC to voluntarily develop whatever plans it believes appropriate to the GDP facilities. If NRC does require the development of emergency plans, NRC could ask for FEMA support in reviewing the adequacy of those plans, but is not required to request that assistance. To the extent that the plans developed by USEC use federal agency resources (e. g. by agreement to use DOE resources), FEMA may have a coordination function based on its general mandate to coordinate federal assistance for emergency situations.



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