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RECORD #120

TITLE: Licensing of Reactor Facilities Prior to Issuance of  
Operating License

FICHE: 02753-280



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

APR 18 1980

MEMORANDUM FOR: Donald A. Nussbaumer, Assistant Director  
for Material Safety & Licensing  
Division of Fuel Cycle & Material Safety

FROM: Guy H. Cunningham, III  
Director & Chief Counsel, Regulations Division  
Office of the Executive Legal Director

SUBJECT: LICENSING OF REACTOR FACILITIES PRIOR TO ISSUANCE  
OF OPERATING LICENSES

This is in response to your memorandum of March 31, 1980 concerning the licensing of utilities located in Agreement States to possess and use radioactive materials at reactor facilities prior to the issuance of operating licenses. The particular question you raise is whether NRC or the Agreement State is authorized to issue licenses for radioactive materials possessed and used at such facilities when the materials are directly connected with reactor operations and are needed during the construction and preoperational phases of a reactor.

It is my opinion that NRC retains exclusive jurisdiction to license such materials when the materials are possessed and used by the utility for the purposes described. This conclusion flows from Section 274c of the Atomic Energy Act of 1954, as amended, which provides in pertinent part that "No agreement entered into [with a state]...shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of (1) the construction and operation of any production or utilization facility;...." The attached informal legal memo, prepared in 1969, sets forth the rationale for this conclusion. That memo addressed the precise question you raise.

If I can be of further assistance, please do not hesitate to call.

*J.H. Jane R. Mapes*  
Guy H. Cunningham, III  
Director & Chief Counsel  
Regulations Division  
Office of the Executive  
Legal Director

Enclosure:  
As stated

cc: Darrell G. Eisenhut, DOR w/encl.  
G. Wayne Kerr, OSP, w/encl.