

APR 19 1979

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MEMORANDUM FOR: Commissioner Gilinsky

FROM: Howard K. Shapar
Executive Legal Director

THRU: L. V. Gossick
Executive Director for Operations

SUBJECT: WATSON MEMORANDUM OF APRIL 13, 1979 ENTITLED "LONG-TERM ENVIRONMENTAL RADIATION MONITORING AT THREE MILE ISLAND"

I have reviewed the subject memorandum from the White House at your request. The role assigned to EPA is arguably a departure from the allocation of duties between NRC and EPA that has been followed in the past, and could result in duplication of functions and confusion of the roles of NRC and EPA. However, the memorandum is careful not to interfere with NRC's independent responsibilities, and EPA can present reasonable legal arguments in support of its execution of the assigned tasks.

I. EPA Authority

EPA nuclear plant radiation monitoring functions have in the past been generally confined to information-gathering in support of standard-setting activities. The functions assigned here to EPA seem focused on one plant and one incident rather than on formulation of standards.

However, the President's initiative may be appropriate under that portion of Reorganization Plan No. 3 of 1970 that transferred to EPA all functions of the Federal Radiation Council (FRC). The functions of the FRC are to "...consult qualified scientists and experts in radiation matters, and qualified experts in the field of biology and medicine and in the field of health physics...", to "advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States...", and to "...perform such other functions as the President may assign to it by Executive order...."^{1/}

1/ AEA section 274h.

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One task assigned to EPA is to "prepare a report of...environmental radioactivity for the recently established Presidential Commission to investigate the accident."^{2/} Under the circumstances, such a report may be viewed as part of the advice with respect to radiation matters that might be solicited from the FRC. Moreover, as noted, responsibility for related functions could be assigned to FRC by Executive order. (Such an Executive order would presumably be forthcoming if the activities of EPA were to be challenged.)

II. NRC Authority

The Commission itself has the authority to engage in environmental monitoring at Three Mile Island to protect^{3/} the health and safety of the public and to enforce its regulations.^{3/}

Moreover, the Commission "with the consent of the agency concerned" may also utilize or employ the services of personnel of any Government agency to perform this function.^{4/} Proceeding under this authority, the Commission could not only provide for the conduct of a monitoring program, but could request and coordinate the services of other agencies.

The Watson Memorandum assigns to EPA as "lead agency" a responsibility to "operate, at an adequate level, [an] environmental monitoring network for air and water-borne radioactivity" and "coordinate data collection." This creates the potential for duplication of efforts undertaken by the Commission; it may also lead to confusion with regard to the respective responsibilities of NRC and EPA and result in some obscuring of accountability. However, these problems could be reduced (and perhaps eliminated) if NRC were to refrain from conducting its own monitoring program and rely, instead, on the EPA program.

^{2/} The President's Commission on the Accident at Three Mile Island was established by Executive Order 12130, April 11, 1979. The Commission is directed to conduct a "comprehensive study and investigation" of the accident which is to include, among other things, a technical assessment of the events and their causes and appropriate recommendations. Executive agencies are directed, to the extent permitted by law, to furnish information, advice, or assistance upon request by the Chairman of the Commission.

^{3/} AEA section 161c.

^{4/} AEA section 161f.

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III. Role Under the Memorandum

The Watson Memorandum is addressed only to the Administrator of the Environmental Protection Agency and the Secretaries of Energy and Health, Education, and Welfare. Moreover, in specifying the functions to be performed, Mr. Watson states that he is "asking each of the agencies named below to continue to meet the responsibilities indicated." The agencies so named were EPA, HEW, and DOE. There is no suggestion that NRC is to be subject to direction by EPA; on the contrary, EPA is given appropriate instructions only to "make every effort" to obtain all pertinent radiation data from NRC.

While NRC undoubtedly has and will continue to take into account the monitoring and data collection efforts of sister agencies, there is nothing in the Memorandum that would restrict the authority or discretion of the Commission to determine what information is needed in order for it to carry out its licensing and regulatory responsibilities, or the manner in which such information is to be obtained.

Original signed
by H. K. Shapar

Howard K. Shapar
Executive Legal Director

- cc: Chairman Hendrie
- Commissioner Kennedy
- Commissioner Bradford
- Commissioner Ahearn
- SECY
- R. Minogue
- OGC
- PE

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