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

CHAIRMAN

June 28, 1979

The Honorable Jennings Randolph, Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This is in response to the letter of May 25, 1979 from the Committee on Environment and Public Works in which the Committee asked the Commission to review its authority to approve operational decisions at Three Mile Island and at any other damaged reactors in the future. The Committee also requested information concerning legal authorities and regulatory procedures "that ensure public participation, the examination of alternatives to the action proposed by the licensee, and consultation with State officials in the post-accident decision-making process."

The Commission regards its general supervisory authority under the Atomic Energy Act as sufficient to enable us to require NRC approval of all significant decisions made during the recovery and cleanup period following an accident at a power reactor. In particular, Section 161b. of the Act authorizes the Commission to "establish ... by order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable ... to protect health or to minimize danger to life and property." We view this provision as giving the Commission ample power to order a licensee to obtain Commission approval prior to any action significantly involving radiation health and safety.

Although the situation has not arisen at Three Mile Island, circumstances are conceivable in which prompt construction and operation of new equipment not covered by the facility license, newly designed decontamination facilities for example, might be necessary to reduce health hazards and assure continued safe shutdown at a damaged facility. In such emergency circumstances the Commission believes it has implied authority to order, effective immediately, that equipment be built and operated; and may conduct license amendment proceedings while, and after, the ordered action takes place. However, clarifying legislation might be desirable on this point. Therefore, the Commission believes that it might be desirable if Section 189 were to be amended to state explicitly that the Commission may issue an immediately effective license amendment upon a finding that public health and safety or common defense and security so requires. Such an amendment would not interfere with an interested person's right to request a hearing at which the Commission's action would be reviewed at a later time. We have enclosed language for an amendment to Section 189a. of the Atomic Energy Act which would clarify this point.

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With regard to your question about public participation, examination of alternatives, and consultation with State officials, Section 189 of the Atomic Energy Act, imposes notice and hearing requirements when a post-accident decision involves a license amendment involving a "significant hazards consideration." Also, the National Environmental Policy Act requires the NRC to consider environmental impacts and alternatives when NRC approval of an environmentally significant proposal by the licensee is contemplated. These statutory requirements are implemented in the Commission's regulations at 10 CFR Parts 2 and 51.

The Commission intends to provide for substantial participation by the public and State officials in its Three Mile Island post-accident decisionmaking. On May 25, 1979 the Commission issued a statement directing the NRC staff to prepare an Environmental Assessment (an appraisal of environmental effects of NRC actions to decide whether a NEPA impact statement is required -- see 10 CFR 51.7) regarding proposals to decontaminate and dispose of radioactively contaminated waste water from Three Mile Island. The Commission's statement directed that operation of the proposed decontamination system should not begin until the public has had an opportunity to comment.

The Commission is well aware of the public concern which the Three Mile Island accident has occasioned. Thus, as other important stages in the cleanup at Three Mile Island become ripe for decision, the Commission expects to provide for participation by interested members of the public, including State and local officials, to the maximum extent practicable.

I hope you find this letter responsive to your questions. I shall be happy to provide whatever further information you may require.

Sincerely,

Joseph M. Hendrie

Enclosure: Draft Amendment

cc: The Honorable Robert T. Stafford
The Honorable Gary Hart
The Honorable Alan Simpson

Add at end of § 189a. of the Atomic Energy Act of 1954, as amended, the following new sentence:

Nothing in this Act shall be deemed to preclude an amendment to a license from being made effective prior to any notice or hearing if the Commission determines that an immediately effective amendment is necessary to protect the public health and safety or the common defense and security.