



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

COMM
CORR

OFFICE OF THE
CHAIRMAN

June 26, 1979

The Honorable Paul McClosky
U.S. House of Representatives
Washington, D. C. 20515

Dear Congressman McClosky:

At the hearing of the Subcommittee on Government, Energy and Natural Resources of the House Committee on Government Operations on May 14, you asked for a statement in the two areas of emergency preparedness and nuclear waste disposal.

Due to the urgency of other matters before the Commission which have precluded any real opportunity for a collegial response, I have decided to provide you with my personal views. It has been impractical to schedule a Commission meeting on this matter in order to provide a collegial response within a reasonable time period.

During the May 14 hearing two major areas of concern were highlighted. First is the area of advance planning for actions that might be necessary if a nuclear accident were to occur, i.e., emergency planning. The NRC's licensing requirements related to an applicant's emergency plans are set forth in Appendix E to 10 CFR Part 50, "Emergency Plans for Production and Utilization Facilities," and in Regulatory Guide 1.101, "Emergency Planning for Nuclear Power Plants." In addition to establishing plans and procedures for coping with emergencies within the boundary of the nuclear power plant site, applicants are required to make certain emergency readiness arrangements with State and local organizations to cope with plant-related emergencies outside the site boundary, with particular emphasis on the low population zone. In this context, we have regarded off-site emergency plans to be related to the nuclear licensing process. The Three Mile Island accident has raised a number of questions about the adequacy of emergency radiological response plans and the legal requirements for such plans. It is clear that emergency planning needs broad and substantial upgrading across the board.

The GAO recommendation that the NRC should not license additional nuclear power plants for operation unless the associated State and local emergency response plans have been concurred in by the NRC has been viewed by many as the answer to these questions. This proposed licensing requirement will be the subject of an upcoming, expedited NRC rulemaking proceeding. Within the next two weeks we anticipate issuance of an advance notice of proposed rulemaking in order to obtain comments from the public as early as possible. This rulemaking will include consideration of the following issues, as a minimum:

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- a. What should be the overall objectives and specific goals for State and local emergency plans, and license plans?
- b. What constitutes an effective emergency response plan for State and local agencies, as well as licensees (i.e., what are the critical elements that must be included in an effective plan)?
- c. Should prior NRC concurrence in the associated State and local emergency response plan be a requirement for the issuance of any new operating license for a nuclear power plant? If so, when should this general requirement become effective?
- d. Should NRC concurrence in the associated State and local emergency response plan be a requirement for continued operation of any nuclear power plant with an existing operating license? If so, when should this general requirement become effective?
- e. What should be the criteria for judging acceptability of the interface between, and coordination of, on-site licensee emergency plans and off-site State and local plans?
- f. What actions should be taken in response to the recommendation of the joint NRC/EPA Task Force Report?*

Since we want to have State and local government, licensee, and public comments, and a thorough staff review, I would not, at this time, want to predict specific outcomes of this rulemaking.

In the past, NRC has encouraged the licensee to make arrangements for emergency drills by State and local governments. This participation has been encouraged by the NRC in two ways: on the licensee side through the language in 10 CFR 50 Appendix E, paragraph IV.I; and on the State side by making a test of a State plan a precondition to NRC concurrence. We expect the State plans to be updated and tested annually thereafter. Making joint drills or exercises involving the nuclear facilities and the States and local governments a specific requirement for initial and continued NRC concurrence in emergency response plans will be one of the considerations in our rulemaking procedure.

The current objective of the NRC in this regard extends beyond the question of requirements associated with the granting of licenses for operation. It is our goal to ensure that effective, tested State and local emergency response plans are established, as well as licensee plans, wherever needed and on an accelerated schedule. Nowhere is this need more evident than in States where we already have nuclear power plants in operation. To this end, we are now engaged in a comprehensive re-evaluation of NRC's approach to radiological emergency response planning and preparedness. Our current efforts in this regard are outlined below:

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*"Planning Basis for Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants," NUREG-0396/EPA 520/1-78-016, December 1978.

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- As an interim measure and in preparation for the rulemaking, we are re-examining our program in the emergency response area with respect to the responsibilities of NRC, licensees, State and local governments, and related Federal agencies. A special NRC Task Force has been chartered to concentrate on the broad aspects of emergency planning. We will review our guide and checklist of essential elements in State and local plans in the light of lessons learned at Three Mile Island, and we will examine how to review previously concurred-in plans should revisions in the guide and checklist seem appropriate. We will investigate ways in which NRC can provide additional technical assistance to State and local agencies once their plan has been approved, e.g., by providing realistic scenarios for use in tests and drills.
- We are moving to assist States in which NRC concurred-in State plans do not presently exist. We have written to the Governor of each State with a nuclear power plant in operation (and to those States contiguous to those with operating reactors) where NRC has not concurred in the State's emergency plans, to urge his immediate attention to this important area and to offer NRC's assistance in the development of the State's emergency response plan. In addition, we have recently transmitted similar letters to the Governors of those States in which nuclear power plants are being constructed.
- We have solicited comments from the States on GAO's specific recommendation, and we will consider their suggestions in the re-examination of our program and in the upcoming rulemaking.

In summary, NRC is committed to meeting the objective of having effective, tested emergency response plans in place, wherever they are needed, as early as possible. To this end, we will reprogram present resources and seek any needed additional resources as the result of our re-examination.

I also want to note the very important question of providing financial assistance for some States and local governments to put in place effective emergency planning measures. A number of approaches would appear to be possible, and some combination of these may be required. One approach is that NRC might be given legislative authority to provide direct financial assistance. Alternatively, increased federal support could be given for civil defense organizations which could have benefits for a broader class of emergencies beyond those which might arise from a nuclear accident. Another possibility is for NRC to require licensees to provide some assistance to local governmental organizations, perhaps by providing essential communications and monitoring equipment. The question of funding for emergency planning, at least at the local level, would seem to be an appropriate matter to include in our rulemaking proceeding.

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Legislation would probably be required to implement some, or all of these measures. This will be the subject of review by the special NRC Task Force on emergency planning and future Commission discussions. We will, of course, make suggestions to Congress for legislation if that seems desirable.

As a final note, our response to the GAO recommendation on emergency planning, provided to the Chairman, Government Operations Committee, makes many of the same points given above.

The second major area of discussion of the May 14 hearing was that of nuclear waste disposal. We can look at the plans for disposal of nuclear wastes, including spent fuel from commercial power reactors, from both a short and long-term perspective. For the immediate future, while long-range plans for permanent high level waste disposal facilities are being developed, the Administration proposes to accept ownership of both foreign and domestic spent fuel, for a one-time charge to the utility. The Administration's legislative proposals, S. 797 and S. 798, would provide for the timely management of spent fuel from nuclear reactors by the Department of Energy, and for NRC licensing of such DOE facilities as are primarily used for the receipt and storage of commercial spent fuel. Interim DOE management, under NRC license, would ease the immediate problem of spent fuel storage and contribute to the Administration's nonproliferation objectives through acceptance of foreign spent fuel which might otherwise be reprocessed to produce weapons-usable material. I might note that a generally similar scheme delineating DOE and NRC responsibilities is presented in Title II of S. 685, introduced by Senators Jackson, Johnston, and Church, which has already been the subject of hearings. Also, H.R. 2586, introduced by Representatives Staggers and Devine, provides for DOE to undertake interim storage and ultimate disposal of spent fuel. In short, there have been several bills introduced and hearings scheduled in both the House and Senate which would provide the necessary legislative authorities for DOE and NRC to move forward with the more immediate tasks of managing spent fuel as high level waste.

From a long-term perspective, there is no question that the Federal Government as a whole needs to get on with the research and development necessary to construct viable permanent waste disposal facilities. I believe DOE prototype or pilot-plant facilities are the transition mechanisms essential for translating the research into full-scale permanent waste storage facilities. This is one of the options offered by the Interagency Review Group on Radioactive Waste Management which calls for a step-by-step program for developing full-scale permanent HLW disposal facilities. The Group has presented a number of options to the President along these lines, and I anticipate action on this matter soon.

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I think it is safe to say that the essential research and development, design, and construction of a permanent disposal facility will be carried out by DOE and its contractors, and I can assure you that NRC will be monitoring the DOE activities as well as meeting NRC's licensing responsibilities for HLW disposal. I think that NRC should license DOE prototype or demonstration disposal facilities.

As for costs, I believe the Federal Government should fund the R&D effort, but that the utilities should pay the necessary costs for management of spent fuel. Thus, permanent disposal facilities for commercially generated HLW would be operated by the Government on a full cost recovery basis. Initial DOE cost estimates for this one time disposal fee are around \$250 per kilogram of heavy metal, which includes interim storage of the spent fuel transportation to a repository, and permanent disposal in the repository. I would expect that the utility should be able to pass these costs through so that the users of nuclear electricity pay as they go for waste disposal.

Another question raised -- and, I believe, a crucial one -- relates to the matter of siting and the individual State's interest in having a waste disposal facility located within its borders. This is a very difficult question. On this matter the Interagency Review Group Report calls for a process of "consultation and concurrence" with the States as the appropriate mechanism for reaching agreement on disposal sites. I support this approach, believing that the States should participate fully both in the early site reviews and in the licensing hearings. I would hope that such participation would lead to eventual State agreement with the yet to be developed siting and design decisions for permanent waste disposal facilities. In this regard, I am enclosing a copy of NUREG-0539, "Means for Improving State Participation in the Siting, Licensing, and Development of Federal Nuclear Waste Facilities," a report to Congress dated March 1979.

As a bottom line, however, it seems to me that any legislation regarding the States' role in waste siting should include a provision for Federal preemption, i.e., the authority to proceed with the licensing and construction of such facilities, if the process of consultation and concurrence does not lead to approval of some minimum number of otherwise appropriate sites. I should emphasize that this is a personal view I have come to in the past year. The Commission has not discussed this aspect of the waste disposal problem recently and I would expect some difference in Commissioners' views as to the criteria for Federal preemption, or indeed the need for such a provision. Commissioner Bradford has indicated to me that he disagrees with the need for Federal preemption on the basis of arguments he has seen to date.

Sincerely,

Joseph M. Hendrie
Joseph M. Hendrie
Chairman

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Enclosure:
NUREG-0539

cc: Rep. Toby Moffett