

March 31, 1980

SECY-80-171

COMMISSIONER ACTION

For: The Commissioners

From: Carlton R. Stoiber
Deputy General Counsel

Subject: COMMISSION COMMENTS ON PROPOSED LEGISLATION
TO ESTABLISH A STATE PLANNING COUNCIL ON
RADIOACTIVE WASTE MANAGEMENT

Discussion: The Department of Energy ("DOE") has requested the Commission's views on proposed legislation to establish a State Planning Council on Radioactive Waste Management ("Council"). This legislation would provide a statutory basis for the Council recently established by Executive Order. Under the proposed legislation, the re-established Council would retain the same composition and functions (except for reporting to the President) as it currently possesses. However, the Commission would no longer be invited to participate in Council activities. The major changes proposed by DOE would give the Council budgetary and spending authority, add authority to obtain services from other Federal agencies [with those agencies' consent] and vest administrative and executive functions in the Council Chairman. Currently, under the Executive Order, the Secretary of Energy supplies the Council's funds and support services, and performs the functions of the President under the Federal Advisory Committee Act, except for reporting annually to the Congress.

The major proposed changes described above incorporate several of the Commission's comments to OMB on the original proposed Executive Order to establish the Council but which were not incorporated in the final Executive Order. However, Commission comments to OMB on the scope of the Council's considerations, which also were not incorporated into the final Executive Order, have not been included in DOE's proposed legislation.

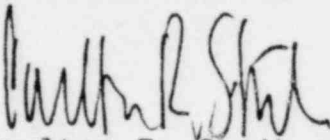
Contact:
Sheldon L. Trubatch, OGC
3224

64

Thus, the proposed scope of the Council's consideration would be as broad as its current scope and include facilities for the temporary storage of spent fuel and NRC licensing procedures and regulatory content. Since these matters are now being actively considered by the Council, it would probably not be useful for the Commission to reiterate its recommendation that the Council's scope be narrowed.

The remaining Commission comments to OMB recommended that NRC should participate in the Council's activities as an observer, and that the Council should include representation by the Council on Environmental Quality (CEQ) and the Department of Health and Human Services (HHS, formerly HEW). The Executive Order provides for NRC participation, but not the suggested representation by CEQ and HHS. The proposed legislation does not even provide for NRC participation. Accordingly, we have prepared a draft reply to DOE suggesting that the proposed legislation be amended to include participation by NRC in Council activities, and representation of CEQ and HHS on the Council.

Recommendation: Send the proposed letter to DOE.


Carlton R. Stoiber
Deputy General Counsel

Attachment:

Draft letter to Deutch from Ahearne

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Tuesday, April 15, 1980.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT April 8, 1980, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

DISTRIBUTION

Commissioners
Commission Staff Offices
Exec Dir for Operations
ACRS
Secretariat



CHAIRMAN

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

The Honorable John M. Deutch
Under Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Deutch:

This is in response to your request for the Commission's views on proposed legislation to establish a State Planning Council on Radioactive Waste Management ("Council"). The Commission believes that the proposed legislation would create an appropriate vehicle for State participation in Federal waste management activities. However, the Commission notes that there is no provision for NRC participation in the Council. Such participation is provided for in the Executive Order initially establishing the Council. The NRC believes that its participation as an observer of the Council's activities would be consistent with its role as an independent regulatory agency and would be a natural extension of its current role in the Council. NRC participation is expected to include explanations of NRC licensing policy as it relates to the Councils' deliberations. Such explanations would be especially important with respect to proposed regulations now pending before the Commission for high-level waste repositories. Final NRC actions on these regulations is expected to occur after the termination of the current Council. Accordingly, the Commission recommends that the proposed legislation be amended to include continuing NRC participation in the State Planning Council.

The Commission also believes that the Council's membership should include representatives from the Council on Environmental Quality (CEQ) and the Department of Health and Human Services (HSS). CEQ representation could encourage greater State participation in the environmental review process required by the National Environmental Policy Act; and HSS representation is consistent with its involvement with the health effects of low-level ionizing radiation. Accordingly, the Commission recommends that the proposed legislation be amended to include representation of CEQ and HSS on the Council.

Thank you for this opportunity to comment on this matter.

Sincerely,

John F. Ahearne