September 3, 1976

Note to: Karl R. Goller, Assistant Director
for Operating Reactors

Re: Legal Questions Concerning Re-Review Program

As I have outlined to you previously, I see no major legal obstacle to a re-review program. The questions you posed were all premature until the program had more definition. Now with the draft report prepared, the questions seem trivial.

1. This agency has a wide range of statutory authority, which would enable it to obtain any information relevant to the conduct of its powers and duties. (See §161 of the Act). Some of these are set forth in our regulations. Which tool should be used in any particular case will depend upon the specific circumstances.

   As I have understood, the re-review program is one in which we expect cooperative assistance from the utilities involved. In this case a specific regulation under which to "demand" the information appears irrelevant. Similarly, the most effective tool to induce timely compliance is the close contact that is maintained with the utility by the project managers. For limited instances or for a few truculent licensees, the authority provided by §50.54(f) and §50.71 should be adequate, with enforcement under §2.200 et seq.

   On the other hand, if there is expected to be substantial resistance to the re-review program information requests from the industry, and you feel it will not effectively progress without a specific legal requirement under which to demand wide ranging information, then the program as a whole seems completely different than that described in the draft report.

   If you anticipate an investigatory program as to which there will be extensive wide ranging resistance and truculence on the part of industry, the draft report should be revised to indicate the fact that the program proposed is to be an industry wide investigation. In that instance you may very well need to have the Commission exercise some of its extraordinary powers to obtain desired information.

2. I understand that the program would be a staff institute case-by-case updating and re-consideration of specific aspects of operating facilities, each carefully tailored to the most significant aspects of that individual facility. If so, each inquiry to each facility would be quite different. However, if you envision blanket generalized requests of the type restricted by GAO requirements, the program is again quite different than the impression given by the draft report.

3. The safety standard applicable to every plant licensed under the Atomic Energy Act is that it is not to be "inimical to the ... public health and safety." This has been converted by our regulations into the standard of "reasonable assurance" of no "undue risk" (CP's) and "reasonable assurance" that it can be operated "without endangering" (OL's). These are the fundamental standards applicable to every licensed facility - no matter when licensed. To determine whether such standards are met you must assess the safety of the facility. In doing so you must use all the knowledge available to the agency concerning reactor safety. The General Design Criteria, while specifically mentioned only in §50.34(a), are described by the Commission as establishing "minimum requirements for the principal design criteria...." The "principal design criteria" establish the necessary design, fabrication, construction, testing and performance requirements for systems and components...that provide reasonable assurance that the facility can be operated without undue risk...." (Emphasis added.)

   As so described by the regulations, the standards of the General Design Criteria must be used for assessing safety for all facilities. Deviations from the General Design Criteria must be justified on the carefully explained basis that the deviation provide an equivalent degree of safety. (The General Design Criteria are described to provide minimum requirements for systems and components that provide reasonable assurance of no undue risk. Consequently, no lesser degree of safety satisfies the basic standards for licensing of facilities.)

4. What is your question? Legal interpretations cannot be provided in a vacuum. Moreover, it is probably premature to speculate on what backfiting recommendations will be made until after the re-review has been carried out for a particular case.

5. An environmental impact statement is required for "major federal actions significantly affecting the quality of the human environment."

As I have understood, the program was to be an updating and upgrading of the documentation forming the basis for acceptance of the various systems and components of facilities presently operating. This would not seem like the kind of program needing such a statement.

However, before we can advise you as to whether an impact statement is required, we will need from you a clear statement of the possible and the anticipated impacts of the program.

6. We are required to notice any proposed regulations and statements of general policy which govern licensees, applicants, or members of the public. We are also required, by statute and our own regulations, to notice the issuance of any facility license or amendment of a facility license. To the extent that the program involves any such actions, appropriate notices will be required.

Joseph F. Scinto