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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

MAY 24 1994

MEMORANDUM FOR: Walter Schwink
 Fuel Cycle Enrichment Branch
 Office of Nuclear Materials Safety
 and Safeguards

FROM: Martin G. Malsch
 Deputy General Counsel for
 Licensing and Regulation
 Office of the General Counsel

SUBJECT: FEMA "JURISDICTION" OVER GASEOUS DIFFUSION
 PLANTS FOR EMERGENCY PLANNING PURPOSES

You have requested input on FEMA's "jurisdiction" over the DOE Gaseous Diffusion Plants (GDPs) being leased to the United States Enrichment Corporation (USEC). OGC understands the question to be whether FEMA has regulatory authority to "require" that USEC prepare emergency plans for the GDP facilities. In addition, it is understood that the request includes the FEMA ability to require preparation of emergency plans by USEC in the situation where NRC is requiring emergency planning, but has not specifically requested FEMA review of the emergency plans.

President Carter established FEMA under the Reorganization Plan No. 3 of 1978, using his authority under 5 U.S.C. §§ 901 et. al. In addition, FEMA was given substantial responsibilities by Executive Order No. 12148, (July 20, 1979), and by the Disaster Relief Act of 1974 (42 USC 5121 et. al.). In general, FEMA's mission and authorities are concerned with fostering, to the maximum extent possible, cooperation in emergency planning among state, local and federal authorities, and to administer the use of federal resources for both emergency planning and disaster relief.

FEMA's regulations are contained in 44 CFR Parts 0-361. FEMA "requirements" are not imposed on entities (either private entities or state and local governments) in the same sense that NRC regulations are applicable to anyone possessing, using or owning licensed materials. Rather, FEMA operates under a consensual regime whereby it provides assistance to state and local governments, and disaster relief to private parties, only when such assistance is requested. Therefore, FEMA's "requirements" are in the nature of qualifications a state or local government, or a private individual, must meet to receive federal assistance. The federal assistance may take a variety of forms including monetary support, training, technical assistance or the providing of manpower or materials for use in an emergency. In addition, and of primary relevance to NRC licensees, is that FEMA regulations

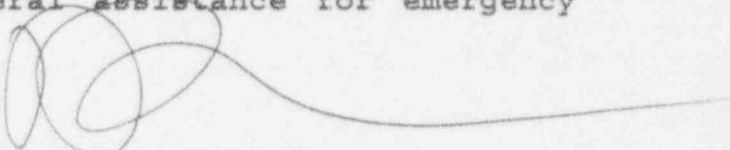
provide for review of state and local emergency plans at the request of state and local governments. The FEMA regulatory provisions specifically related to NRC licensees are discussed below.

When formal review of emergency plans is requested by the state, FEMA has requirements addressing the review and approval of emergency plans involving commercial nuclear power plants. 44 CFR Part 350. However, those provisions specifically provide that they do not apply to any NRC licensees other than commercial nuclear power reactors. 44 CFR § 350.4. In certain limited circumstances FEMA will also review a utility offsite response plan, but by its terms this ability is limited to emergency plans involving commercial nuclear power plants. 44 CFR Part 352. The only Part of FEMA's regulations directly referencing other NRC licensed facilities is 44 CFR Part 351. In those provisions, however, it is specifically stated that Part 351 does not include any requirements associated with FEMA findings and determinations on the adequacy of state and local radiological emergency preparedness. The same provision also notes that Part 351 does not set forth Federal agency responsibilities or capabilities for responding to an accident at a fixed nuclear facility. 44 CFR § 351.3. Rather, Part 351 addresses the assignments and responsibilities for federal agencies relating to support to state and local governments in emergency planning and emergency response. In addition, Part 351 provides for appropriate national and regional committees to coordinate such assistance.

The Memorandum of Understanding between the NRC and FEMA dated June 17, 1993 does not change the above situation. That agreement provides that at NRC's request or by mutual agreement of NRC and FEMA, FEMA will provide interim findings to support NRC licensing actions. These interim FEMA findings can be made separate from, but concurrent with, FEMA's Part 350 or Part 352 reviews if those reviews have not been completed. Under the subheading "Areas of Cooperation", the MOU also notes that FEMA will provide support to NRC for licensing reviews related to reactors, fuel facilities and materials licensees. However, that section also specifically provides that NRC will, substantially prior to the time a FEMA evaluation is needed, identify those fuel and materials licensees with the potential for significant accidental offsite radiological releases and will transmit a request for review to FEMA as the emergency plans are completed. Thus, the provisions of the MOU are consistent with FEMA becoming involved in reviewing emergency plans only when requested to review such plans by the state and local governments, or other federal agencies.

The Reorganization Plan No. 3 of 1978; Executive Order No. 12148, (July 20, 1979); Executive Order No. 12657 (November 18, 1988); the Disaster Relief Act of 1974 (42 U.S.C. 5121 et. al.); and FEMA's regulations in Title 44 of the Code of Federal Regulations and the June 17, 1993, Memorandum of Understanding between FEMA and NRC,

have been reviewed. No regulatory authority or requirements have been identified to indicate that FEMA has or could exercise authority to "require" emergency plans at the GDPs nor to require submission of emergency plans for mandatory review by FEMA. If USEC decides to develop an emergency plan that includes coordination with state and local governments, the state and local governments may voluntarily seek FEMA guidance and support under various provisions of FEMA's regulations. e. g. 44 CFR 351.20. FEMA could also, under the MOU, provide input to NRC's safety evaluation process if NRC requested that support. Accordingly, the applicable FEMA statutory and regulatory provisions indicate that, if NRC does not require the GDPs to develop emergency plans, it would be up to USEC to voluntarily develop whatever plans it believes appropriate to the GDP facilities. If NRC does require the development of emergency plans, NRC could ask for FEMA support in reviewing the adequacy of those plans, but is not required to request that assistance. To the extent that the plans developed by USEC use federal agency resources (e. g. by agreement to use DOE resources), FEMA may have a coordination function based on its general mandate to coordinate federal assistance for emergency situations.



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NRC RESPONDS TO REQUESTS TO EXTEND COMMENT PERIOD ON PROPOSED URANIUM ENRICHMENT REGULATIONS

The Nuclear Regulatory Commission has decided not to extend the formal public comment period on its proposed standards for the U.S. Enrichment Corporation's operation of uranium enrichment plants leased from the Department of Energy at Portsmouth, Ohio, and Paducah, Kentucky. However, since requests have come in to allow further comment and since the NRC staff has not completed its review of public comments received thus far, it is prepared to consider additional comments until such time, in mid-July, when it plans to make recommendations to the Commission. The additional comments will be assessed to the extent possible by time constraints.

The Energy Policy Act, passed on October 24, 1992, requires the NRC to issue appropriate public safety and health standards for the plants within two years. Due to this Congressionally mandated deadline, there is insufficient time to formally reopen the public comment period.

Proposed regulations on this subject were published in the Federal Register on February 11 of this year, with 60 days allowed for public comment. Interested persons were invited to submit written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Any additional comments should be sent to the same address.

Single copies of the proposed regulation may be obtained from Roberta Gordon, Radiation Protection and Health Effects Branch Secretary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301/415-7555; fax: 301/415-5385. All documents related to the rulemaking may be examined at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC. In addition, the NRC is in the preliminary stages of establishing local public document rooms near the plants where the public will be able to review information relating to NRC certification.

The plants at Portsmouth and Paducah enrich uranium by a gaseous diffusion process. They were previously operated by a contractor for the Department of Energy and, prior to that, for the Atomic Energy Commission. The Energy Policy Act of 1992 amended the Atomic Energy Act of 1954 to establish a new government corporation, U.S. Enrichment Corporation (USEC), for the purpose of conducting a uranium enrichment enterprise. As of last July 1, USEC assumed responsibility for operating the portions of the plants required for the production of low-enriched uranium for commercial uses, and for marketing of low-enriched uranium.

DOE will continue to own the two gaseous diffusion enrichment plants and to control all portions of the plants that are not leased by USEC.

The Energy Policy Act directs the NRC to issue standards to govern the portions of DOE's gaseous diffusion uranium enrichment facilities leased to USEC -- in order to protect the public health and safety from radiological hazards, provide for the common defense and security, and ensure adequate safeguards. NRC is authorized to establish a process under which USEC's operations at the Portsmouth and Paducah plants will be annually reviewed by NRC, in consultation with the Environmental Protection Agency, to determine whether they are in compliance with NRC standards. In consultation with DOE and EPA, NRC will report at least annually to Congress on the status of compliance and on health, safety and environmental conditions at the plants.

Under a transition agreement reached between DOE and NRC, DOE will continue its regulatory oversight of nuclear safety, safeguards and security for the gaseous diffusion plants until NRC issues standards and certifies that the facilities leased by USEC are in compliance.

In proposing certification standards for continued operation, NRC is emphasizing general performance objectives similar to those in the Commission's current regulations for major fuel cycle facilities. The rules would include, in a new Part 76 to the Commission's regulations, the procedural and technical standards that are required by the Act or by the Commission's own procedures. Under the procedural standards, NRC would publish in the Federal Register a notice of the filing of the application for a certificate, and copies of the application would be made available for public inspection and comment. A public meeting will be held on the first certification application, and on future applications if NRC determines that there is sufficient public interest or that a meeting is in the public interest.

The technical standards would include requirements regarding criticality safety, emergency procedures, employee protection

against discrimination by USEC if the employee engages in certain protected activities (such as providing the NRC with information about alleged violations of the regulations), completeness and accuracy of information provided by USEC to NRC, sanctions for deliberate misconduct (such as knowingly engaging in an act that would cause USEC to be in violation of NRC rules), material control and accounting, reports required to be submitted to NRC and safeguards.

In addition, the new regulations would make applicable to the gaseous diffusion plants leased by USEC certain other general portions of NRC's regulations, including requirements for notices to workers, radiation protection, reporting of defects, and standards for packaging and transportation of radioactive material.

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