

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

PDR 11/21/78

ACRS-1522

WORKING COPY: June 6, 1978
MEETING DATE: February 22, 1978
CORRECTED COPY: July 20, 1978
CERTIFIED: July 24, 1978

WORKING GROUP ON SAFEGUARDS AND SECURITY
WASHINGTON, DC
FEBRUARY 22, 1978

The ACRS Working Group on Safeguards and Security met in Room 1046 at 1717 H Street, N.W., Washington, DC at 8:30 a.m. on February 22, 1978 to discuss the effectiveness of physical security measures for nuclear facilities. The notice of this meeting appeared in the Federal Register on February 7, 1978, pages 5119-5120. Copies of the Federal Register Notice and the Tentative Detailed Schedule of discussions are attached (Attachments A and B, respectively). The only written statement received from the public was the KMC, Inc. study report and the only oral presentations by members of the public were those by representatives of KMC, Inc. No written reports were issued or approved by the Working Group at this meeting. A draft report of "A Study to Assess the Radiological Sabotage Potential of Operating Nuclear Power Plants" by KMC, Inc. (copy of file in the ACRS office) formed the basis for the discussions with KMC, Inc. Copies of all handouts and visual aids are on file in the ACRS office.

Attendees

ACRS

S. Lawroski, Chairman
M. Bender
J. Ebersole
J. C. Mark
C. P. Siess
J. H. Arnold
C. Michelson, Consultant
S. Woodcock, Consultant
J. C. McKinley, Staff (Designated Federal Employee)
H. Alderman, Staff

NRC Staff

J. Miller - NRR
D. Chapell - I&E
L. Bush - I&E
M. J. Gaitanis - NRR
W. F. Pasedag - NRR
F. Pagano
H. L. Ornstein - EDO
R. L. Barnard - Meradcom
W. M. Murphy - RES
W. H. Immerman - RES
W. J. Ross - SR
M. J. Urizar - Consultant (LASL)

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Attendees Continued

KMC, INC.

D. F. Knuth

J. E. McEwen

PUBLIC

L. B. Russell - Baltimore Gas & Elec.

J. A. Quinn - International Energy
Assoc. Ltd.

J. M. Elliott - Int'l Energy Assoc. Ltd.

C. A. Negin - Int'l Energy Assoc. Ltd.

L. B. Bean - CE

R. A. Szalay - AIF

N. C. Shirley - GE

S. Eaton - S&W

S. Brewer - Public Service Indiana

D. J. Chin-- GPU Consultant

T. J. Myers - General Public Utilities

W. Hartley - Ariz. Public Ser. Co.

N. Tasker - Northeast Utilities

P. A. Moeller - PSE&G

E. Borella - Ebasco Services

J. W. Davis - Duke Power Co.

D. M. Crowe - Southern Company Services

L. T. Gucwa - Georgia Power Co.

L. T. DeStefano - Bechtel Power Corp.

D. E. Moeggenberg - Consumers Power

D. A. Bixel - Consumers Power

R. A. Rice - GPU

R. Russo - GPU

J. M. Pilant - NPPD

R. J. Deneen - Phila. Elec. Co.

J. M. Maurer, Jr. - Duquesne Light

W. M. Marquardt - Duquesne Light

Executive Session (Open) 8:30 a.m.

The Chairman determined that other members of the Working Group had no additional specific items they wanted added to the schedule of topics that were listed to be discussed.

Meeting With The NRC Staff (Open) 8:45 a.m.

Dr. Lawreski, Chairman of the Working Group, opened the meeting with a statement regarding the conduct of the meeting in accordance with the provisions of the Federal Advisory Committee Act and the Government in the Sunshine Act. Mr. J. C. McKinley was the Designated Federal Employee present.

Experience Since Last Meeting (NRC) (Open)

Mr. Chapell, from the NRC Office of Inspection and Enforcement (I&E), reviewed the security experience since his last report (July 1977) to the Working Group. This experience represented a trend since the implementation of the NRC regulations embodied in 10 CFR 77.55. The results of I&E security inspections are shown in Slides 1 through 5. It was noted that unannounced inspections result in about three times as many items of noncompliance as are found on announced inspections. Since the last Subcommittee meeting (July 1977), the number of non-compliance infractions in the area of access requirements has become dominant over, but closely followed by, those relating to detection aids and physical protection. These three categories represent about 75% of all of the noncompliances. Because of concern regarding the potential for damage by an insider, the philosophy of free access to permit surveillance and maintenance is being supplanted by locked doors and controlled access. This presents the problem of what degree of noncompliance does an unlocked interior door represent? Attachment C contains the Staff definitions of the degrees of noncompliance.

Mr. Chapell also noted that, currently, neither the corporate nor the contract guard forces are measuring up to the physical and mental standards the Staff would like to see achieved. He noted that there is about a 50% turnover in guard personnel each year. This, in part, was attributed to the low wage scale for guards; which is, in some cases, less than that for the janitors. Mr. Bender expressed the opinion that part of the turnover problem is the lack of job security or advancement opportunity for guards.

Mr. Chapell pointed out that the locations that had the more stable guard forces had the higher wage scales and generally better performance. Mr. Woodcock remarked that this large turnover provides a large pool of individuals with an intimate knowledge of the nuclear plant layout and the security measures available to protect it. Mr. Chapell recognized the problem. Dr. Lawroski suggested that the problem of turnover be given attention and some recommendations developed to reduce the turnover rate. Mr. Chapell pointed out that Appendix B to 10 CFR 73.55 will establish requirements for guard force qualifications and training.

Mr. Chapell proceeded to review the security incidents that occur at licensee facilities. The majority of the incidents are bomb threats (see Slide 3). Most of these are merely threats but a few do involve explosives (four since 1969). There have been two incidents of intrusion into protected areas but both appear to be innocent actions by individuals seeking aid following minor accidents. The licensees checked the stories and found no reason to doubt them.

Implementation of 10 CFR 73.55 (NRC) (Open)

Mr. Miller summarized the status of implementation of NRC Regulation 10 CFR 73.55. All licensees have submitted security plans, 40 out of 57 sites have been visited by NRC and the security plans reviewed. The plans are now to be revised based on the NRC comments. Additional meetings with the licensees are planned (see Slide 6-10). To aid the teams making these reviews, a series (18 to date) of review guidelines have been developed, their titles are listed on Slide 12. Copies of the guidelines themselves are attached to the office copy of these minutes for those members that would like to review them. These guidelines are not yet part of a Standard Review Plan but could be worked in during the next updating. Slide 11 identifies some of the problem areas identified thus far by the review.

Study to Assess the Radiological Sabotage Potential of Operating Nuclear Power Plants (KMC, Inc.) (Open)

Mr. Knuth described the results of the above study which was sponsored by 24 utilities. The study looked specifically at sabotage by an "insider." The study was motivated by the NRC's implementation of the "two-man rule" of 10 CFR 73.55. In the study, no restrictions were placed on the insider with regard to skills required, tools available, or motivation required.

Mr. Knuth indicated that the detailed study results were considered "Proprietary" and, if KMC, Inc. had the authority, it would classify them SECRET. However, the summary document and slides used in this portion of the meeting were unclassified.

Mr. Knuth discussed the background leading up to this study and the study's goals. He also described the methodology used in the analyses and the reviews that were performed to assure the completeness of the analyses. He reviewed the history of sabotage studies as they relate to nuclear power plants (Slide 14) as well as to ongoing studies in the field.

In response to a question by Mr. Woodcock, Mr. Knuth stated that neither he nor any of the staff performing the sabotage study had ever sabotaged a nuclear power plant or any other equipment.

The KMC study was intended to be a disciplined engineering approach that considered a number of factors including safety, operations, and maintenance. The objectives were to assess the degree of difficulty of conducting a successful sabotage action that would lead to a substantial release of radioactivity, identify and evaluate the more likely sabotage scenarios, provide means for quickly evaluating any specific scenario, and to identify possible improvements in plant security which do not detract from plant safety or operability. To achieve a substantial release of radioactivity requires a core melt, although lesser releases could be achieved by melting spent fuel stored in the pool or by release of material (gaseous or liquid) in the radwaste systems. The WASH-1400 methodology was used to determine

the scenarios that would lead to a core meltdown. The overall results from any specific scenario would depend on a number of factors, including basic design resistance to sabotage, dedication and skill of saboteur, probability of detection and interdiction, and damage control measures. The sabotage techniques were taken from the literature and from the knowledge of engineers at the plants.

The first step was to identify the systems and components necessary to prevent core melting then to determine what must be disabled to prevent the proper functioning of the system and finally the action required to disable the proper equipment. KMC, Inc. developed worksheets to catalog and list the components and attributes of those components. Based on this information KMC developed specific scenarios and these scenarios were evaluated to see if they were possible or plausible and finally what could be done to reduce the possibility of sabotage. The study did show that sabotage could be accomplished from a few locations within the plant.

To cause a core melt one could cause a LOCA and fail the capability to make up water or you could fail the decay heat removal capability without a LOCA, or you could cause a transient after disabling its consequence mitigating equipment or you could cause a nuclear power excursion. The study also considered damage control measures that the plant operators might take. For example, if an electromatic relief valve was caused to open to create a small LOCA, the operators could pull the fuse and close the valve.

Mr. Knuth went through a simplified, fictional system and its analytical representation (see Slide 18). The system is represented by an electrical diagram containing a number of contacts in a series-parallel arrangement. Each set of contacts represents an action that a saboteur might take. To be successful, the saboteur must complete a circuit from one side of the diagram to the other. There are a number of different paths possible depending on which contacts (actions) he chooses to close. These electrical diagrams represent the logic diagrams used for each function studied.

Mr. Knuth showed typical work sheets (Slides 19-21) which identified the various ways and locations that typical components could be disabled. After cataloging the equipment, KMC developed scenarios. From these scenarios they looked for common locations to minimize the number of places a potential saboteur would need to have access to. They also looked for means to sabotage equipment so that there would be no indication of malfunction displayed in the control room.

Mr. Ebersole suggested an analysis that would identify a few critical systems needed to assure core cooling and giving them maximum protection rather than trying to protect the entire plant.

Mr. Knuth then described the efforts that KMC had made to assure completeness of its study (Slide 23). The scenarios were reviewed by utility representatives familiar with both PWRs and BWRs to assure they had been adequately covered. In addition, the methodology was reviewed by one of the WASH-1400 authors and by people from Sandia Laboratory. KMC believes it has made an exhaustive review and identified the major scenarios. The scenarios assume a Shift Supervisor's level of knowledge and in limited access. KMC found that the plant operators felt an obligation to protect the health and safety of the public and would take action to protect it no matter what the cause; operational transient, accident or sabotage. Every utility involved in this study had at least one Vice President vitally interested as well as operating personnel down to the Shift Supervisor level. Mr. Knuth thought that the senior operating staff at the plants felt a responsibility to prevent sabotage and that it was not all left to the guard force.

Mr. Knuth concluded (Slide 24) that the methodology provided plant owners with a disciplined engineering approach for evaluating sabotage potential. A sabotage attempt at an operating plant that would lead to a substantial radiological release is a very difficult and uncertain undertaking. If required, engineering modifications can be made to make the sabotage scenarios substantially more difficult. A general requirement for a two-man rule or additional compartmentalization is not necessary or appropriate. The probability of a single inside saboteur escaping detection, injury, or death is low. Even if sabotage is successful there is considerable uncertainty as to the degree of success.

Mr. Woodcock noted that for trained saboteurs, a 90% probability of success was quite acceptable (that implies a 10% chance of the saboteur being killed).

Mr. Michelson took exception to Mr. Knuth's conclusion that the saboteur was in serious risk of detection, death or injury. He thought that there were a number of scenarios that would involve no risk of injury. He noted, however, that this number compared with a large number of risky scenarios could make the probability look unfavorable. He thought the saboteur would select the safest scenario he could find.

Meeting With the NRC Staff (Open) (11:05 a.m.)

Possible Sabotage Scenarios

Mr. Pasedag reviewed possible sabotage scenarios from the point of view of the person protecting the plant rather than the saboteur. He asked where the vital equipment was located and defined "vital equipment" as it is in 10 CFR 73.2 (see Slide 25). He pointed out that this is a two part definition.

The first part is those systems or equipment which would directly or indirectly result in a radioactive release if it were sabotaged and the second part is the equipment or systems necessary to mitigate the consequences of sabotage. The NRC Staff is trying to prevent radioactive releases that would exceed 10 CFR 100 guidelines. In broad terms, the second part encompasses all safety related equipment. The first part of the definition would include the equipment in what are called Type I Vital Areas (see Slide 26). It is the Type I Vital Areas that the Staff wants to protect to the highest level.

The NRC Staff identified three sources within the plant from which radioactive material could be released; these were the reactor core, the radioactive waste system, and the spent fuel storage pool (see Slide 27). The Staff study developed a series of fault trees or sabotage scenarios that could lead to a radioactive release (Slide 28 is a simplified example and Slide 29 is a summary of results). Even though there were a very large number of scenarios that could lead to a radioactive release there were only about eight Type I Vital Areas where the complete act could be accomplished without further access. There is a computer program to perform this analysis.

The NRC Staff is looking at ways to improve the resistance of a plant to sabotage. This is the topic of Technical Activity No. A-29 "Nuclear Power Plant Design for the Reduction of Vulnerability to Industrial Sabotage" (see Slides 30 and 31). It is expected that this effort will result in recommendations regarding changes in the Regulations, additional Regulatory Guides, and/or modification of the Standard Review Plans. It is expected that this activity will be completed in October 1979. Preliminary conclusions are that Type I Vital Areas can be adequately protected by compliance with the requirements of 10 CFR 73.55. The Technical Activity is really aimed at improvements to be made in future plants.

No attempt has been made by either the NRC Staff or KMC, Inc. to determine the probability of sabotage or of successful sabotage.

Mr. Miller indicated that the NRC Staff would be receptive to a discussion on specific plants that use the KMC analysis. He stated that the "two-man rule" and compartmentalization were two methods of reducing the potential for sabotage and there might be acceptable alternates.

The NRC Staff acknowledged that they had no one who had knowingly sabotaged a nuclear or any other kind of plant. Mr. Woodcock noted that he had been trying to find an experienced consultant for the Staff but that everyone he knew was currently employed and not available. He suggested that nuclear plants would only be dealing with professional sabotage (the implication

being that they were adequately protected against casual or amateur sabotage). Mr. Pasedag said that the NRC was receiving information from other government agencies.

There was general discussion of the degree of protection needed and how much additional protection could be obtained by rearrangement or other means that would not increase costs significantly. The increased protection against possible sabotage should not interfere with safety, effective plant operation, or fire protection.

Protection of Security Information

Mr. Miller pointed out that the licensing process is essentially an open process and the protection (withholding) of security information is in direct conflict with the precept of openness. However, the NRC Staff is proposing to the Commissioners, legislation which would permit the NRC to withhold certain safeguards information and certain design information (see SECY-77-611A, B, & C [Attachments D, E & F]).

Mr. Michelson asked what could be done to withhold information regarding defects in the security system that must be reported under Part 21. Mr. Miller said that the NRC would withhold as much as possible.

Research Into Physical Security

Mr. Murphy from the Office of Research presented a brief overview of the research activities currently underway. The effort is in two parts, the first is toward analytical methods to determine if the proposed security measures are sufficient for various threats and the second is toward design innovations or operator action to reduce the probability of successful sabotage. The various analytical programs under development and their delivery dates are shown in Slide 32. This slide also shows the areas addressed by each analysis tool. The plant design feature portion is shown in Slide 33, none of this work has begun yet. It is hoped that this study will produce optional systems to enhance security, reduction of vital areas or make them more defensible, and finally examine the role and effect of damage control measures.

The total amount of research funding in this area is about \$4 million with \$3 million going into the analytical side and \$1 million going into the design side. The total safeguards budget is about \$14 million, including fuel cycle research.

A bunkered system may be included in the \$1 million design study. Mr. Michelson thought that that level of effort appeared to be rather small to assure adequate protection.

Mr. Murphy indicated that there was a portion of the program allocated to looking at foreign reactor plant designs.

Improvised Explosives

A motion picture film prepared for Sandia on improvised explosives was shown. It described the fabrication and effects of five improvised bombs. The first was the coke bottle bomb or shaped charge for penetrating thick metal walls such as valve or pump bodies. The second was a thermos bottle bomb for general blast effects. The third was the shrapnel bomb for the destruction of large areas of electrical components. The fourth was a fuel air bomb that is effective in large closed spaces. The final explosive was a "platter charge" which can be used to penetrate thick concrete structures or thick metal walls.

Mr. Woodcock, who helped prepare the film, noted that it had originally been about twice as long before it was severely edited to make it acceptable to Sandia. He noted that all of the explosives used were obtained off the streets in Seattle. The 22 pounds of plastic explosives were obtained in about nine hours for half a case of whiskey.

Mr. Woodcock claimed that he was able to smuggle about 200 pounds of explosive into one of the nuclear facilities. It was noted that this was done before the new 10 CFR 73.55 requirements were put into effect.

A complete transcript of the open sessions of this meeting is on file at the NRC Public Document Room at 1717 H Street, N.W., Washington, DC or can be obtained from ACE Federal Reporters, Inc., 444 North Capitol Street Washington, DC 20001 (202) 347-3700.

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KMC, Inc. Proprietary Presentation (Closed)

Attendees

ACRS

S. Lawroski
M. Bender
J. Ebersole
J. C. Mark
J. Arnold
C. Michelson
S. Woodcock
J. McKinley, Staff
H. Alderman, Staff

NRC

L. Crocker
W. J. Ross
W. H. Immerman
L. Bush
M. J. Gaitanis
E. W. McPee
J. S. Berggren
F. Pagano
R. Cudlin
J. Miller
W. Pasedag
M. J. Urizar, Consultant
D. Kunihiro
H. L. Ornstein

KMC and KMC Approved Utility Representatives

W. M. Marquardt - Duquesne Light Co.
J. McEwen - KMC, Inc.
D. Knuth, KMC, Inc.
L. B. Bean - Commonwealth Edison Co.
J. M. Maurer, Jr. - Duquesne Light Co.
D. J. Chin - GPU
T. J. Myers - General Public Utilities
N. S. Tasker - Northeast Utilities
P. A. Moeller - PSE&G Co.
T. E. Holland - Duke Power
J. W. Davis - Duke Power
F. W. Hartley - Ariz. Publ. Ser. Co.
D. E. Moeggenberg - Consumers Power
D. A. Bixel - Consumers Power
R. Rice - GPU
R. Russo - GPU
J. M. Pilant - Nebr. Public Power

DELETION

3

DELETION

3

NRC Classified Presentation (Closed)

Attendees

ACRS
S. Lawroski
M. Bender
J. Ebersole
J. C. Mark
C. P. Siess
J. Arnold
C. Michelson
S. Woodcock
J. McKinley

NRC
L. Crocker
L. Bush
M. J. Gaitanis
J. S. Berggren
W. H. Immerman
F. Pagano
R. Cudlin
J. Miller
W. Pasedag
M. J. Urizar, Consultant
H. L. Ornstein

Others With Security Clearance and Need to Know

J. E. McEwen - KMC, Inc.
D. F. Knuth - KMC, Inc.
R. J. Deneen - Phila. Elec. Co.
L. B. Bean - Commonwealth Edison Co.
N. Shirley - GE
J. Maurer, Jr. - Duquesne Light Co.
N. S. Tasker - Northeast Utilities
T. E. Holland - Duke Power Co.
J. W. Davis - Duke Power Co.
F. W. Hartley - Ariz. Publ. Ser. Co.

Type I Vital Areas

Mr. Pasedag continued his earlier discussion by specifically identifying the Type I Vital Areas in a typical nuclear power plant. These were the areas from which successful sabotage could be perpetrated. He showed a conceptual drawing of a perimeter guard tower proposed by one licensee. The Subcommittee discussed further the use of deadly force to protect nuclear facilities.

Staff Review of "Michelson Report"

Mr. Cudlin described the NRC Staff review of the "Michelson Report", he affirmed that it went well beyond the normal NRC analysis and review of plant security. He suggested that some credit should be given for damage control actions taken by the plant operators.

Mr. Cudlin stated that the "Michelson Report" has been made available to a number of members of the NRC technical staff and they generally agree with its conclusions. A knowledgeable, dedicated individual with unlimited

access can perpetrate successful sabotage but the ease of accomplishment is very plant specific. The ease of accomplishment is also a matter of preception but it is sufficiently easy to warrant the implementation of 10 CFR 73.55 and the study of alternate plant designs or arrangement. A Bunkered system will be studied as one of the design options.

Implementation of 10 CFR 73.55

Mr. Pagano reported on the progress in implementing 10 CFR 73.55. NRR has ten men working in this area. He described some of the problems encountered at specific facilities and some of the corrective measures taken.

Analysis of Effects of Explosive and Incendiary Devices

Mr. Urizar, a consultant to the NRC from Los Alamos, described some of the studies made of the effects of a variety of explosive and incendiary devices on selected plant structures and components.

Mr. Urizar also noted that many of the explosives decompose rapidly in high temperature and/or high radiation fields. A number of methods of bringing explosives onto the site were discussed. The effectiveness of various means of detecting explosives was also discussed.

The effectiveness of the "two-man" rule was discussed as were other aspects of the sabotage problem.

Executive Session (Closed)

Attendees: ACRS members, ACRS staff and ACRS consultants only.

Mr. Woodcock noted that there are many people trying to make nuclear power plants safe from sabotage but apparently none of those people have any real sabotage training or experience. He was concerned with the apparent preoccupation with building higher fences and stronger guard towers. He thought there should be an effort made to identify who might want to sabotage a nuclear plant and what their capabilities might be. He was concerned about all of the detailed technical information available to potential saboteurs or terrorists. He felt that the most important aspect of plant security was dealing with people and the development of loyalty to the plant.

Mr. Ebersole expressed his concern for covert actions within the plant as opposed to an external assault.

Dr. Siess remarked that it would take 15 years before a bunkered system would be in operation, based on current standardization practices and regulatory review processes.

Mr. Michelson agreed with the KMC scenarios but he felt that sabotage was not as difficult as KMC tried to make it appear. He thought that something should be done to make the very simple scenarios more difficult. He was not favorably impressed with the NRC Staff review of his report and he would not recommend major changes in plant design without a more serious study.

Mr. Woodcock discussed ways by which the spent fuel storage pool could be severely damaged by explosives and the ways the explosives could be transported and placed.

Following these discussions the meeting was adjourned.

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addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 31st day of January 1978.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors
Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-3246 Filed 2-6-78; 8:45 am]

[7590-01]

IDocket Nos. STN 50-477 & STN 50-478

PUBLIC SERVICE ELECTRIC AND GAS CO. (ATLANTA) GENERATING STATION, UNITS 1 & 2

Assignment of Atomic Safety and Licensing
Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR § 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel member to serve as the Atomic Safety and Licensing Appeal Board for this construction permit proceeding:

Richard S. Salzman, Chairman
Dr. John H. Buck
Michael C. Farrar

Dated: February 1, 1978.

MARGARET D. DU FLO,
Secretary to the
Appeal Board.

[FR Doc. 78-3247 Filed 2-6-78; 8:45 am]

[7590-01]

IDocket Nos. 50-259, 50-260, and 50-261

TENNESSEE VALLEY AUTHORITY

Issuance of Amendments to Facility Operating
Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued amendment No. 35 to facility operating license No. DPR-33, amendment No. 32 to facility operating license No. DPR-52, and amendment No. 9 to facility operating license No. DPR-68 issued to Tennessee Valley Authority (the licensee), which revised technical specifications for operation of the Browns Ferry nuclear plant, unit Nos. 1, 2, and 3, (the facility) located in Limestone County, Ala. The amendments are effective as of the date of issuance.

Amendment No. 35 to DPR-33 changes the technical specifications to incorporate the limiting conditions for operation associated with cycle 2 operation of Browns Ferry nuclear plant unit 1. These changes involve a revised fuel cladding integrity safety limit for

minimum critical power ratio (MCPR), revised operating limit MCPR's for both 7x7 and 8x8 fuel assemblies, the addition of linear heat generation rate (LHGR) limits for the 8x8 fuel, revised limits for the maximum average planar linear heat generation rate (MAPLHGR) for the 7x7 and 8x8 fuel assemblies, and reduced limits for scram insertion times. The revised MAPLHGR limits are based on the results of a new evaluation of the emergency core cooling system (ECCS) performance submitted in compliance with our order for modification of license dated March 11, 1977. This amendment terminates the March 11, 1977, order. In addition a restriction on power operation during the initial startup for cycle 2 has been imposed until sufficient high temperature recirculation has taken place to ensure disintegration of a rubber shoe cover that had fallen into the unit 1 vessel during the refueling outage.

Amendment Nos. 25 to DPR-33, 32 to DPR-52, and 9 to DPR-68 change the technical specifications for each of the Browns Ferry nuclear plant units to clarify the operability requirements of the rod worth minimizer and the rod sequence control system during scram time testing, delete the annual operating report requirements, add standards for qualifications of the health physics supervisor, change the frequency of cycling fire protection system valves from quarterly to annually, and substitute revised, but equivalent, terms in the equations for the limiting settings on the average power range monitors' scram and rod block setpoints.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendments. Notice of proposed issuance of amendment to facility operating license in connection with this action was published in the Federal Register on September 15, 1977 (42 FR 46430), and on November 1, 1977 (42 FR 57186). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) and environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see: (1) The applications

for amendments dated January 11, May 11, July 8, September 23, 26, October 28, November 16, December 13, 1977; and January 3, 1978, amendment No. 35 to license No. DPR-33, amendment No. 32 to license No. DPR-52, and amendment No. 9 to license No. DPR-68, and (3) the Commission's related safety evaluation of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C., and at the Atlanta Public Library, South and Forsyth Streets, Athens, Ala. 35611. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 10th day of January 1978.

For the Nuclear Regulatory Commission.

A. SCHWENGER,
Chief, Operating Reactors
Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-3248 Filed 2-6-78; 8:45 am]

[7590-01]

ADVISORY COMMITTEE ON REACTOR SAFETY
GUARDS WORKING GROUP ON SAFETY
GUARDS AND SECURITY

Notice of Meeting

The ACRS Working Group on Safety Guards and Security will hold a meeting on February 22, 1978, in Room 1046, 1717 H Street NW, Washington, D.C. 20555, to discuss the effectiveness of physical security measures for nuclear facilities.

In accordance with the procedures outlined in the Federal Register on October 31, 1977, page 56972, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the designated Federal employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, February 22, 1978: 8:30 a.m. until the conclusion of business.

The Working Group may meet in executive session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

NOTICES

At the conclusion of the executive session, the Working Group will hear presentations by and hold discussions with representatives of the NRC staff and their consultants, pertinent to this review.

The Working Group may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

In addition, it may be necessary for the Working Group to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the designated Federal employee for this meeting, Mr. John C. McKinley telephone 202-634-1371, between 8:15 a.m. and 5 p.m., e.s.t.

Dated: February 3, 1978.

SAMUEL J. CHILK,
Secretary of the Commission.

(FR Doc. 78-3501 Filed 2-6-78 10:16 am)

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 27, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice through this release.

Further information about the items on this Daily List may be obtained

from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529.

NEW FORMS

U.S. INTERNATIONAL TRADE COMMISSION

U.S. Purchasers' Questionnaire on Ice Hockey Sticks, single time, business firms, Louis C. Kincannon, 395-3211.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization & Conservation Service, Grain Storage Survey, single time, farm operators warehousemen, Charles A. Ellett, Office of Federal Statistical Policy and Standards, 395-6132.

DEPARTMENT OF JUSTICE

Material Assistance Program Evaluation Questionnaire, LEAA-7330/3, single time, State law enforcement planning agency (56), Laverne V. Collins, 395-3214.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Program Administrative Review, BEH, annually, OE-9066, SEAS, LEAS, INSTS, parent groups, adv. panels, Human Resources Division, Laverne V. Collins, 395-3532.

REVISIONS

VETERANS ADMINISTRATION

Request for Training Supplies, 22-1905M, on occasion, Schools, Housing, Veterans and Labor Division, 395-3532.

DEPARTMENT OF COMMERCE

Bureau of the Census, Annual Survey of Oil and Gas, MA-12K, annually, operators and lessees of oil and gas field properties, Louis C. Kincannon, Office of Federal Statistical Policy and Standards, 395-3211.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration, Quick Response Surveys, Patient Package Inserts, other (See SF 83), telephone households in a national probability sample, Richard Eltinger, Office of Federal Statistical Policy and Standards, 395-3214.

National Institutes of Health, Multiple Risk Factor Intervention Trial, other (See SF 83), individuals at high risk death from coronary disease, Richard Eltinger, Office of Federal Statistical Policy and Standards, 395-3214.

EXTENSIONS

VETERANS ADMINISTRATION

Application for Nonmedical Insurance Age 50 and Under, 29-353A, on occasion, insured veteran, Housing, Veterans and Labor Division, 395-3532.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration: Establishment License Application for Manufacture of Blood and Blood Components, FD 2599, on occasion, manufacturers of blood and blood components, Human Resources Division, Richard Eltinger, 395-3532.

Supplement To Establishment License Application for Manufacture of Blood and Blood Components, Human Resources Division, Richard Eltinger, 395-3532.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration:

Application for Air Taxi Commercial Operator Certificate Under FAR Part 135, FAA 8900 6, on occasion, private individuals/firms, Economic and General Government Division, Arnold Strasser, 395-4892.

Application for Pilot School Certificate, FAA-8420 8, on occasion, proprietors/firms, Economic and General Government Division, Arnold Strasser, 395-4892.

VELMA N. BALDWIN,
*Assistant to the Director
for Administration.*

(FR Doc. 78-3370 Filed 2-6-78; 8:45 am)

[3110-01]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 30, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

NATIONAL SCIENCE FOUNDATION

Study of Scientific Journals, single time, 500 U.S. scientists, Laverne V. Collins, 395-3214.

DEPARTMENT OF AGRICULTURE

Economic Research Service, Farmers' Newsletter Evaluation Pretest, single time, farmers' in sample mailings, Ellett, C. A., 395-6132.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Study PF Selected Institutions and Students Participating in the Federal Insured Student Loan Program, OE 531-1, single time, students and school officials, Human Resources Division, Laverne V. Collins, 395-3532.

TENTATIVE DETAILED SCHEDULE
ACRS WORKING GROUP ON SAFEGUARDS AND SECURITY
WASHINGTON, DC
FEBRUARY 22, 1978

Approximate Time

8:30 a.m.	I	Executive Session (Open) Review of Proposed topics for discussion
8:45 a.m.	II	Meeting with Representatives from the NRC Staff regarding security experience at operating reactors and the implementation of 10 CFR 73.55 (Open)
9:15 a.m.	III	Meeting with Representatives from KMC, Inc., regarding their "Study to Assess the Radio- logical Sabotage Potential of Operating Nuclear Power Plants" (Open)
10:30 a.m.		BREAK
10:45 am.	IV	Meeting with Representatives of the NRC Staff regarding: (Open) 1. Its review of possible sabotage scenarios and consequences; 2. Policies for the protection of information; including design information and informa- tion relating to defects or malfunctions of security systems; 3. A summary of research planned or in prog- ress to enhance physical security
12:00 NOON	V	Movie on improvised explosives (Open)
12:30 p.m.		LUNCH
1:30 p.m.	VI	Meeting with Representatives of KMC, Inc., regarding the proprietary portions of their study (Closed - Proprietary)
3:00 p.m.	VII	Meeting with Representatives of the NRC Staff regarding the potential consequences of specific acts of sabotage (Closed - Classified)

ATTACHMENT B

3:45 p.m.

BREAK

4:00 p.m.

VIII Meeting with Representatives of the NRC
Staff regarding site specific security
experience (Closed - Proprietary)

4:30 p.m.

IX Meeting with Representatives of the NRC
Staff regarding the vulnerability of
specific designs to external threats
(Closed - Proprietary)

5:00 p.m.

ADJOURN .

ATTACHMENT B

U.S. NUCLEAR REGULATORY COMMISSION
OFFICE OF INSPECTION AND ENFORCEMENT

INSPECTION AND ENFORCEMENT MANUAL

CHAPTER 0800 - ENFORCEMENT ACTIONS

0801 PURPOSE

Enforcement actions are used to insure that licensees comply with Commission requirements. Sanctions selected for noncompliance situations should provide licensees with incentive to take timely corrective action and to avoid future noncompliance. Punitive sanctions are imposed on recalcitrant offenders.

This instruction prescribes the Office of Inspection and Enforcement (OIE) policy and guidelines for NRC Enforcement Program implementation. It includes: policy and guidelines; enforcement procedures for Regional Offices and OIE Headquarters staff; guidelines for sanction selection and use and criteria for civil penalty determinations.

0802 DEFINITIONS

.01 Regulatory Requirement

A "regulatory requirement", as used in this chapter, refers to a legally binding requirement or prohibition imposed on a licensee or other person. Normally, regulatory requirements consist of directions or prohibitions set forth in the Atomic Energy Act or the regulations, orders, licenses and permits issued pursuant to the Act.

.02 Acceptable Items

An acceptable item is a matter or situation not involving an item of noncompliance, failure to meet a licensee commitment, deviation or an unresolved item.

.03 Noncompliance

As used in this chapter, "noncompliance" refers to a failure to comply with a regulatory requirement. For the purposes of this chapter, items of noncompliance have been categorized into three categories of severity: violations, infractions, and deficiencies.

Violation

A violation is an item of noncompliance of the type listed below, or an item of noncompliance (1) which has caused, contributed to or aggravated an incident of the type listed below, or (2) which has a substantial potential for causing, contributing to or aggravating such an incident or occurrence; e.g., a situation where the preventive capability or controls were removed or otherwise not employed and created a substantial potential for an incident or occurrence with actual or potential consequences of the type listed below:

- (a) Exposure of an individual in excess of the radiation dose specified in 10 CFR 20.403(b) or exposure of a group of individuals resulting in each individual receiving a radiation dose which exceeds the limits of 10 CFR 20.101 and a total dose for the group exceeding 25 man-rems.
- (b) Radiation levels in unrestricted areas which exceed 50 times the regulatory limits.
- (c) Release of radioactive materials in amounts which exceed specified limits or concentrations of radioactive materials in effluents which exceed 50 times the regulatory limits.
- (d) Fabrication, or construction, or testing or operation of a Seismic Category I system or structure in such a manner that the safety function or integrity is lost.
- (e) Failure to function when required to perform the safety function or loss of integrity of a Seismic Category I system, or structure; or other component, system, or structure with a safety or consequences limiting function.
- (f) Exceeding a safety limit as defined in technical specifications associated with facility licenses.
- (g) Industrial sabotage of utilization or fuel facilities.
- (h) Radiation or contamination levels in excess of limits on packages or loss of confinement of radioactive materials in packages offered for shipment on a common carrier.
- (i) Diversion or theft of plutonium, uranium 233, or uranium enriched in the isotope U-235.
- (j) MUF or LEMUF exceeds any applicable limit by a factor of two.

0800-2

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ATTACHMENT C

- (k) All security barriers or controls removed or inoperative and there is unimpeded access to a vital area.
- (l) Other similar items of noncompliance having actual or potential consequence of the same magnitude.

Failure to report the above items as required constitutes a violation of the same importance level.

.05

Infractions

An infraction is an item of noncompliance of the type listed below, or an item of noncompliance (1) which resulted in a reduction of preventive capability below requirements but redundant controls precluded an item of noncompliance of the violation category, or (2) which caused, contributed to or aggravated such an incident or occurrence; e.g., the preventive capability or controls were removed or otherwise not employed and there was substantial potential for an incident or occurrence with actual or potential consequences of the type listed below:

- (a) Exposure of an individual or groups of individuals to radiation in excess of permissible limits but less than the values in 10 CFR 20.403.
- (b) Release of radioactive materials in concentrations or rates which exceed permissible limits but in amounts less than permissible limits.
- (c) Failure to function or loss of integrity of a Seismic Category I system or structure, or other component, system, or structure with safety or consequences limiting function during test; or failure to meet surveillance frequencies.
- (d) Fabrication, or construction, testing or operation of a Seismic Category I system or structure in such a manner that the safety function or integrity is impaired.
- (e) Exceeding limiting conditions for operation (LCO).
- (f) Inadequate management or procedural controls in the QA implementation.
- (g) Safety system settings less conservative than limiting safety system settings.

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ATTACHMENT C

- (h) MUF or LEMUF exceeds any applicable limit by any amount up to a factor of two.
- (i) Security degraded or impaired by removal or impairment of a required barrier or control but a redundant system operative.
- (j) Exceeding limits or limiting conditions for operation in licenses, technical specifications, guides, codes, or standards which are imposed for the purpose of minimizing adverse environmental impact.
- (k) Other similar items of noncompliance having actual or potential consequences of the same magnitude.

Failure to report the above items as required constitutes an item of noncompliance of the same category.

.06 Deficiency

A deficiency is an item of noncompliance in which the threat to the health, safety, or interest of the public or the common defense and security is remote; and no undue expenditure of time or resources to implement corrective action is required; and deficiencies include such items as noncompliance with records, posting, or labeling requirements which are not serious enough to amount to infractions.

Failure to report deficiencies as required constitutes an item of noncompliance of the same category.

.07 Licensee Commitment

From time to time through various written or recorded means (e.g., applications for licenses or permits, hearings, PSAR's, FSAR's, letters and reports to NRR and OLE) applicants and licensees promise that certain equipment, procedures, guides, controls or actions will be installed or implemented. Sometimes these promises are incorporated into license conditions by such means as changes in the technical specifications or inclusion as conditions of the license or permit. Frequently, however, these promises are not transformed into regulatory requirements. Nevertheless, the promises remain outstanding licensee commitments. The term "licensee commitment", as used in this chapter refers to promises of the type described above which have not been transformed into licensee requirements.

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ATTACHMENT C

.08

Deviation

When a licensee does not conform to commitments to the Commission, to the provisions of applicable guides, codes, or standards which were approved by the Commission, or to generally accepted practices in the industry which have safety significance, and such lack of conformity does not constitute an item of noncompliance, it is referred to in this Chapter as a "deviation."

.09

Unresolved Items

An unresolved item is a matter about which more information is required in order to ascertain whether it is an acceptable item, an item of noncompliance, a failure to meet a licensee commitment, or a deviation.

.10

Inspection and Enforcement Bulletins

Inspection and Enforcement Bulletins may be issued for a group of licensees to inspect, report and make commitments to implement certain controls or remedial actions as a result of safety, safeguards, or security related conditions resulting from inadequacies or failures that have occurred at the same or a similar facility, or in similar operations. If a licensee does not make commitments for remedial action as specified in a Bulletin, the NRC may issue an order to require the proposed action.

.11

Inspection and Enforcement Immediate Action Letters (IAL)

Inspection and Enforcement Immediate Action Letters may be issued by the Regional Director (with Headquarters' concurrence) for a licensee to inspect, report and make commitments to implement certain controls or remedial actions as a result of safety, safeguards, or security related conditions resulting from inadequacies or equipment failures at the licensee's facility. If a licensee does not respond to an Immediate Action Letter, the NRC may issue an order to make the proposed action a requirement of the license. The IAL is also used to confirm verbal commitments by licensees to take immediate action.

.12

Notice of Violation

A "Notice of Violation" is a written notice to a licensee under 10 CFR 2.201 of an apparent item(s) of noncompliance (violation, infraction, deficiency). A "Notice of Violation" may itself be the enforcement sanction or it may be issued in conjunction with a civil penalty action or a show cause or other order.

TRSEC Y

UNITED STATES

NUCLEAR REGULATORY COMMISSION

February 13, 1978

SECY-77-611A

POLICY SESSION ITEM

For: The Commissioners

From: Howard K. Shapar
Executive Legal Director

Thru: Executive Director for Operations *[Signature]*

Subject: DRAFT AMENDMENTS TO ATOMIC ENERGY ACT ON THE PROTECTION
OF SAFEGUARDS INFORMATION AND RELATED MATTERS

Purpose: To present to the Commission, as requested by the
Chairman, draft legislation on the protection of
safeguards information and related matters.

Discussion: The Draft legislation in Attachment A is forwarded to
the Commission for its review and consideration.
Earlier, I provided the Commission with a report
(without recommendations) which it requested on the
various alternatives to protect an applicant's light
water reactor physical security plan in the hearing
process (SECY 77-611, December 9, 1977) (Attachment 8).

Subsequently, in response to a request from the Chairman,
on January 23, 1978, I sent to him and to each Commissioner
draft amendments to the Atomic Energy Act the purpose of
which was to clarify the Commission's authority to pro-
hibit the disclosure of sensitive safeguards information.
(Attachment C). Draft "A" forwarded by my January 23,
Memorandum would provide authority to the Commission to
publish regulations which would fully protect sensitive
safeguards information while Draft "B" would only provide
a statutory basis for protecting that information from
disclosure under the Freedom of Information Act.

Commissioner Kennedy informed the Chairman on January
30 of his belief that the Commission should now proceed
to put forward legislation along the lines of Draft "A"

Contact: Howard K. Shapar, ELD
49-27308
William C. Parler, OELD
49-27527

ATTACHMENT D

The Chairman subsequently requested that I expand the Draft "A" approach to include authority for the Commission to institute a clearance program, based on both common defense and security and public health and safety grounds, for any person who has access to a site at which licensed activities are conducted.

Various alternatives to protect safeguards information, with the associated pros and cons of each, are set forth in detail in SECY 77-611 (Attachment B).

The draft legislation in Attachment A is accompanied by a comparative text of changes which would be made to existing law. There is also included a brief explanatory statement which could be used for any exploratory discussions which might be considered useful prior to the submission of the legislation. "Final" legislation which the Commission might decide to submit to the Congress on this subject should, of course, also be accompanied by a detailed section-by-section analysis.

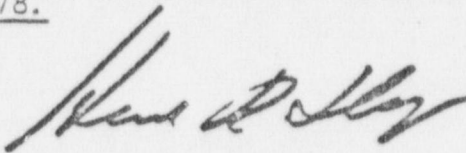
In summary, the draft legislation in Attachment A would:

1. Add a new Section 147 Safeguards Information to the Atomic Energy Act which would:
 - a. Provide a statutory basis for exempting safeguards information in NRC hands from disclosure under the FOIA;
 - b. Authorize the Commission to prescribe regulations to protect safeguards information relating to activities licensed by the Commission which is in the hands of any person whether or not a licensee of the Commission. The Commission would be authorized to prevent the disclosure of safeguards information which could adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion, or sabotage of any type of material or facility licensed by the Commission.

- c. Provide explicit authority for the enforcement of these regulations, including the imposition of civil monetary penalties.
2. Amend Section 161i of the Act to authorize the Commission to implement a clearance program for persons seeking access to safeguards information. In addition, a clearance program could also be implemented for access by any person to a site at which activities are conducted under a license issued by the Commission. Access could be granted if the Commission determines that it will not adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion, or sabotage of any type of any material or facility involved in any activity authorized under a Commission license.
3. Section 181 of the Act would be amended to permit the Commission to disclose protected safeguards information in its proceedings (e.g. contested hearings) under procedures which will effectively prevent the disclosure of such information to unauthorized persons, and with minimum impairment of procedural rights. Section 181 now provides such authority for RESTRICTED DATA and defense information.

Coordination: Copies of this paper have been sent to NRR, NMSS, SD, OPE and OGC.

Scheduling: At an open session, currently scheduled for Tuesday, February 21, 1978.



Howard K. Shapar
Executive Legal Director

Attachments:

- A. Explanatory Statement
on Legislation
- B. SECY 77-611
- C. Memorandum for Chairman
Hendrie fm. Howard K.
Shapar dtd. 01/23/78

DISTRIBUTION

Commissioners
Commission Staff Offices
Exec Dir for Operations
Secretariat

ATTACHMENT A

EXPLANATORY STATEMENT ON LEGISLATION

EXPLANATORY STATEMENT ON
LEGISLATION

The Nuclear Regulatory Commission has the responsibility to assure that the health and safety of the public and the common defense and security are adequately protected in its licensing and regulation of materials and facilities under the Atomic Energy Act of 1954, as amended. It is fundamental that the conduct of this responsibility requires clear and explicit authority to prescribe regulations and issue orders which the Commission deems necessary to protect the public health and safety and the common defense and security. A vital link in this protection is to assure that there is neither access to sensitive safeguards information, nor to sites on which certain activities are carried out involving material or facilities licensed by the Commission by any person who, in the Commission's judgment, could use such access to affect adversely the health and safety of the public or the common defense and security.

Sensitive safeguards information in NRC's hands is subject to disclosure under the Freedom of Information Act (FOIA) unless it falls under one of the exemptions under that Act. Exemption (b)(3) of the FOIA (5 U.S.C. 552(b)(3)) protects information from disclosure which is "specifically exempted from disclosure by statute. This exemption permits the government to withhold information from disclosure under the FOIA where another law requires that it be withheld. There is no existing law which directs that sensitive safeguards information be withheld from disclosure.

To be sufficient, however, the authority should encompass:

- . the protection of sensitive safeguards information in non-NRC as well as in NRC hands;
- . the requirement for a clearance program to assure that no person who is deemed untrustworthy is allowed access either to such information or to such sites;
- . assure that such information is protected when it necessarily must be disclosed to participants in Commission proceedings.

Legislation to clarify and make explicit the authority of the Commission to accomplish each of these objectives would consist of the following three amendments to the Atomic Energy Act of 1954, as amended:

- A. Addition of a new section to the Atomic Energy Act which would explicitly give the Commission the authority to prescribe such regulations as it may deem necessary to prohibit disclosure of safeguards information relating to material or facilities licensed by the Commission by or to any person if, in the judgment of the Commission, the disclosure could adversely affect either the health and safety of the public or the common defense and security. Such adverse effects could result by the unauthorized disclosure of information which could facilitate theft, diversion or sabotage of such material or facility.

- B. Explicit statutory authority is needed for the Commission to require a program for approval for access to sensitive information and to locations at which certain activities are carried out involving materials or any facility licensed by the Commission. The Commission now has the authority under the Atomic Energy Act of 1954, as amended, for a security clearance program for access to RESTRICTED DATA and other classified information. In addition, Public Law 93-377 amended the Atomic Energy Act (Section 161i, 42 U.S.C. 2201i) to give NRC specific authority to require clearances for individuals who perform activities which afford access to or control over quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security.
- Specific authority is needed, however, for a clearance program to control access to unclassified sensitive safeguards information and to sites on which certain activities involving materials and/or facilities licensed by the Commission are conducted.
- C. There is a need for specific authority to assure that sensitive safeguards information is protected from unauthorized disclosure in Commission proceedings. Section 181 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2231, now provides that in Commission proceedings which involved Restricted Data or defense information, the Commission shall provide for such parallel procedures as will effectively safeguard and prevent disclosure of such information

with minimum impairment of the procedural rights which would be available if such information were not involved.

Legislation to accomplish these three objectives would enable the Commission to adopt a carefully tailored program which it deems necessary to carry out prudently its statutory responsibilities, with minimum impairment of procedural rights. In addition to providing this needed flexibility, the legislation would also:

- Provide explicit statutory authority which could stand the scrutiny of intensive judicial review;
- Permit clearance procedures to be invoked prior to access to sensitive information or to sites at which certain activities involving licensed material or facilities are conducted;
- Extend the authority of Section 181 so that needed sensitive safeguards information could be disclosed to authorized persons in Commission proceedings under protective arrangements, with minimum impairment of the procedural rights of the participants.

Draft legislation to accomplish these objectives is attached. Also attached is a comparative text showing changes which the draft legislation would make in existing law.

DRAFT LEGISLATION

Add a new Section 147 "Safeguards Information" to the Atomic Energy Act of 1954, as amended, to read as follows:

"Sec. 147. Safeguards Information -

In addition to any other authority or requirement regarding protection or disclosure of information and notwithstanding Section 552 of title 5, United States Code, relating to the availability of records, the Commission shall prescribe such regulations or orders as it may deem necessary to prohibit disclosure of information relating to special nuclear material, source material, byproduct material, any utilization facility or production facility, licensed by the Commission, if, in the judgment of the Commission, the disclosure of such information could adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion, or sabotage of any type, of such material or facility. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of Section 234 of this Act. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized Committees of the Congress.

Sec. 2. Subsection 161.i of the Atomic Energy Act of 1954, as amended is amended by striking the "and" before "(3)" and by adding at the end thereof the following new language:

"and, (4) to assure that safeguards information protected under Section 147 of this Act is disclosed only to, and that access to any site where activities licensed by the Commission are conducted is limited to, persons, whether employed by a licensee of the Commission or anyone else, whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to have access to such information or to such activities will not adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of any type, of any material or facility involved in any activity licensed by the Commission.

Sec. 3 Section 181 of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

Sec. 181. General. ____ The provisions of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress, approved June 11, 1946) shall apply to all agency action taken under this Act, and the terms 'agency' and 'agency action' shall have the meaning specified in the Administrative Procedure Act: Provided, however, That in the case of agency proceedings or actions which involve Restricted Data, defense information, or safeguards information protected from disclosure under the authority of

Section 147 of this Act, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, or protected safeguards information to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information, or protected safeguards information were not involved.

COMPARATIVE TEXT
CHANGES IN EXISTING LAW

Changes in existing law recommended by the draft legislation are shown as follows (deleted material is enclosed in brackets; and new matter is underscored):

Sec. 147. Safeguards Information -

In addition to any other authority or requirement regarding protection or disclosure of information and notwithstanding Section 552 of title 5, United States Code, relating to the availability of records, the Commission shall prescribe such regulations or orders as it may deem necessary to prohibit disclosure of information relating to special nuclear material, source material, byproduct material, any utilization facility or production facility, licensed by the Commission, if, in the judgment of the Commission, the disclosure of such information could adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion, or sabotage of any type, of such material or facility. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of Section 234 of this Act. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized Committees of the Congress.

Sec. 161. General Provisions. ____ In the performance of its functions the Commission is authorized to ____

* * * * *

1. prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by any person in connection with any activity authorized pursuant to this Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security, [and] (3) to govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property, and (4)

to assure that safeguards information protected under Section 147 of this Act is disclosed only to, and that access to any site where activities licensed by the Commission are conducted is limited to, persons, whether employed by a licensee or anyone else, whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to have access to such information or to such activities will not adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of any kind, of any material or facility involved in any activity licensed by the Commission.

Section 181. General. ____ The provisions of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress, approved June 11, 1946) shall apply to all agency action taken under this Act, and the terms 'agency' and 'agency action' shall have the meaning specified in the Administrative Procedure Act: Provided, however, That in the case of agency proceedings or actions which involve Restricted Data [or], defense information, or safeguards information protected from disclosure under the authority of Section 147 of this Act, the Commission shall provide by regulation for such parallel procedures

as will effectively safeguard and prevent disclosure of Restricted Data [or], defense information, or protected safeguards information to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data [or], defense information, or protected safeguards information were not involved.

ATTACHMENT B

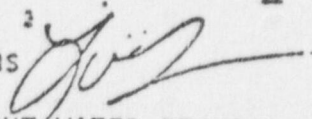
SECY-77-611

December 9, 1977

SECY-77-611

For: The Commissioners

From: Howard K. Shapar
Executive Legal Director

Thru: Executive Director for Operations 

Subject: DISCLOSURE OF AN APPLICANT'S LIGHT WATER REACTOR
(LWR) PHYSICAL SECURITY PLAN IN THE HEARING PROCESS

Purpose: To provide the Commission with a report (without recommendations) which it requested on the desirability of its current practice and various alternatives thereto, including procedural and legislative changes, of litigating the sufficiency of an applicant's physical security plan for a LWR.

Category: This paper covers a major policy issue.

Issue: The changes, if any, which should be made in current practices for the protection of LWR physical security plans in the hearing process.

Decision
Criteria:

1. The plans need to be protected from unauthorized disclosure.
2. If a feature of the plan is properly contested by a party to an adjudicatory proceeding, information should be made available if needed by the hearing participants under procedures which are designed to prevent with minimum impairment of procedural rights, the unauthorized disclosure and compromise of the plan.
3. Unnecessary administrative burdens on the Commission and on the participants in the hearing should be avoided.

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4. Relevant general information concerning the Commission's regulatory requirements for LWR physical security and the approach taken in the application of those requirements leading to the staff's conclusion on the adequacy of a plan should be open to public participation as much as is reasonably practical, but without the unauthorized disclosure of the sensitive contents of any specific plan for a specific site.

Discussion:

On October 25, 1975 the Commission requested the staff to explore and report to the Commission "on the desirability of our present practice and various alternatives to our current practice of litigating the sufficiency of an applicant's physical security plan in an adjudicatory proceeding and permitting an intervenor access to relevant portions of the plan during that proceeding." This report should "discuss procedural changes -- either by administrative rule or statutory amendment -- that would afford the Commission sufficient basis to make the necessary findings before granting a license, without submitting the entire physical security plan to the adjudicatory process, while assuring appropriate opportunity for public participation."

The scope of this paper does not include the question of the protection of security plans for SNM fuel cycle activities. The adjudication of issues relating to the adequacy of physical security plans has thus far arisen only in LWR licensing proceedings. The discussion in the paper is relevant, however, to the protection of physical security plans in the hearing process for any licensed activity.

Under the Commission's current regulations, security plans are "deemed to be commercial or financial information" and are subject to disclosure in accordance with provisions governing

that type of information (10 CFR §2.790).

These security plans are in the possession of both the applicant and the Commission. Although there are no Commission rules which explicitly require the protection of security plans in the possession of a licensee, to the best of our knowledge the plans are being protected. In essence, security plans in NRC hands receive the same degree of protection from public disclosure under §2.790 as is permitted under the Freedom of Information Act. (FOIA). This authority does not permit the refusal on a generic basis to allow intervening parties to an adjudicatory proceeding to inspect security plans.

Under such circumstances, intervenors, their counsel and expert witnesses may be given access to a security plan under the terms of a protective order. 10 CFR §2.790(e) and §2.740(c). Access to a plan or portions thereof is given only to those who have been shown to be "persons properly and directly concerned." (10 CFR §2.790(b)(6)). Under a protective order, a party receiving access to security plan information agrees to protect the information as required by all of the terms and conditions of the order which is developed on a case by case basis. In considering whether the information should be disclosed under a protective order, a material factor is whether the recipient of the information is likely to abide by the terms and conditions of the order. If it is demonstrated that a particular individual is unlikely to do so, a presiding board would be justified in not permitting such individual to have access to the information. Up to this time, we are not aware of any violation of the terms and conditions of a protective order. Even if security plans were classified, a party to an adjudicatory proceeding would have access to them under procedures which "will

effectively safeguard and prevent disclosure of Restricted Data or defense information to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data or defense information were not involved." (Section 181 of the Atomic Energy Act of 1954, 42 U.S.C. 52231).

The penalties for the unauthorized disclosure of information which is classified pursuant to Executive Order 11652 are more pervasive in scope and more severe than those which are otherwise available for such disclosure of proprietary data. If proprietary data is improperly disclosed, the penalties for noncompliance by licensees could, like any other violation of a regulation of the NRC, range from a simple notice of violation, through the imposition of a civil penalty or suspension of the license by the Commission, to imprisonment and/or fine under the criminal provisions of the Atomic Energy Act (section 223). Licensee employees would not be subject to Commission or criminal penalties, but could be discharged by the licensee. Should a NRC employee make an unauthorized disclosure of proprietary information the employee would be subject to a fine (not more than \$1000) or imprisonment (not more than one year) or both and removal under 18 U.S.C. 1905 if the information were legitimately proprietary. By way of contrast, anyone who violates the laws applicable to the unauthorized disclosure of classified information is subject to substantial fine, or imprisonment or both (See e.g. 18 U.S.C. 793, 794(a), 1717, 50 U.S.C. 783, and 5 U.S.C. 8312).

During 1975 and 1976 the Commission and the Staff actively considered alternative means of affording adequate protection to physical security plans for nuclear reactors. (See SECY 76-283, May 25, 1976. The alternatives in SECY 76-283 are set forth in Appendix A to this paper). These alternatives considered the protection of these plans in NRC hands

as well as in non-NRC hands. ^{1/} The protection of the plans in NRC hands focused on three possible approaches of using exemptions from the Freedom of Information Act (FOIA), namely:

1. Proprietary information (the current practice);
2. Classified information; and
3. Legislation which specifically exempts the plans from disclosure.

After consideration of the alternatives and issues presented in SECY 76-283, the Commission concluded that it could "make no definitive recommendation on the classification of reactor security plans or exempting them from public disclosure by new legislation pending evaluation of the Commission's decision on the use of mixed-oxide fuel in light water reactors."

On June 6, 1977, the Acting Director of Nuclear Reactor Regulation asked the Commission to reconsider the question of classification of LWR security plans. (SECY 77-290). This NRR recommendation was based on two fundamental considerations: (1) the developments indicating a lengthy delay in resolving the issue of the use of mixed oxide fuels in LWR's; and (2) the substantial increase in scope and detail of physical security plans required to be in NRC hands for the

^{1/} This paper deals principally with the issue of the protection of security plans during the adjudicatory process. It does not deal extensively with other issues, e.g., the protection of security plans in non-NRC hands or at all with the matter of publically available information in an application which could assist in the penetration of a plant's physical security system. Some of the approaches for the protection of security plans in NRC hands (e.g., classification or legislation specifically exempting the plans from disclosure) would obviously also provide protection for the plans in non-NRC hands. In any event, it is obvious that protection of the plans during the adjudicatory process will be to no avail if the plans are not fully protected overall.

implementation of 10 CFR §73.55 ("Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Industrial Sabotage") served to further demonstrate and magnify the need for adequate protection of the information.

As a result of Commission action on SECY 77-290, former Chairman Rowden on June 30, 1977, sent a letter to Dr. Brzezinski recommending that reactor physical security plans be classified under the provisions of Executive Order 11652 to protect them from unauthorized disclosure.^{2/} This letter, with the separate views of Commissioner Gilinsky, is reproduced in Appendix B. As of the date of this paper, the staff is not aware of any reply to the June 30th letter.

For the purposes of a response to the Commission's October 25 request, classification of LWR security plans would go a long way towards assuring that the plans are protected during the adjudicatory process. This would be the result because applicable statutory authority in the Atomic Energy Act, and regulations implementing that authority, are in place. Section 181 of the Atomic Energy Act provides, in part, that in the case of Commission proceedings (including both licensing and rule making proceedings) which involve Restricted Data or defense information, "the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data or defense information to unauthorized persons, with minimum impairment of the procedural rights which would be available if Restricted Data or defense information were not involved."

^{2/} The Nuclear Regulatory Commission has the authority to classify national security information pursuant to Presidential Memorandum of May 9, 1975 and Executive Order 11652 as amended by Executive Order 11862 of June 11, 1975 which added NRC to the list of agencies authorized to classify such information. From the legal standpoint, there is no requirement that approval from the National Security Council be obtained prior to the exercise of that authority.

Commission regulations which implement the above cited portion of Section 181 are set forth in 10 CFR Part 2, Subpart I. Subpart I from its inception until recently applied only to Restricted Data. The Commission amended it last year to cover also national security information, which is defined (10 CFR 2.902(d)) as including information classified pursuant to Executive Order 11652, as amended. (SECY 76-291, May 28, 1976; the amendment was issued on December 6, 1976, 41 FED. REG. 53328). Subpart I provides carefully-structured procedures whereby parties to Commission proceedings may apply for and obtain appropriate security clearances for access to classified material which is essential to the preparation of the party's case. Under Subpart I no access may be granted without the prior appropriate security clearance. All participants have the obligation to avoid introduction of classified information into the proceeding; the presiding board may strike classified information from the proceeding where this would not prejudice the interests of a party or the public interest; and unclassified versions of classified papers are required. If classified information is essential for the record, the procedures require that there be no unauthorized disclosure of that information at any time.

In view of the foregoing, it would appear that classification of LWR physical security plans is well suited to achieve the objectives for the protection of those plans in the adjudicatory process. The analysis of the problem, however, should not end with the consideration of the classification approach for the following reasons: (1) assuming that the Commission desires to wait until it receives a response to former Chairman Rowden's June 30, 1977 request prior to exercising its authority to classify LWR security plans, there is no assurance that the Administration will give a favorable response or when any response will be received; and (2) it is not known whether the present Commission will endorse the position favoring classification which was asserted in that letter as the preferred alternative. Consequently, an analysis will be made of reasonable alternatives, including classification, for the protection of LWR physical security plans in the adjudicatory process.

The exclusion of all issues regarding LWR physical security plans from the adjudicatory process is not

deemed to be a reasonable alternative. Such an approach would not be consistent with the Commission's October 25, 1977 directive which, among other things, asked that the alternatives assure appropriate opportunity for public participation. In addition, the authority for such an approach would be open to serious question in view of the provisions of section 181 of the Atomic Energy Act which require that parallel procedures which impose minimum impairment of procedural rights be developed for licensing proceedings involving classified information. It would be difficult to justify the need for greater protection to be given to sensitive security plan information in licensing proceedings than Section 181 now authorizes for classified information.

ALTERNATIVES: The following alternatives, which are not mutually exclusive, have been considered:

1. CLASSIFY THE LWR PHYSICAL SECURITY PLAN AS NATIONAL SECURITY INFORMATION UNDER EXECUTIVE ORDER 11652.

PROS:

- a. Information in LWR security plans is just as sensitive as is national security information and its unauthorized disclosure would provide substantial aid not otherwise available to the planning or execution of malevolent acts involving nuclear materials.
- b. Statutory authority and regulatory procedures are in place to provide for handling classified material in adjudicatory proceedings (§181 of the Atomic Energy Act and 10 CFR Subpart I).
- c. Basic classification system is an established and well understood Government system which provides for assurance of the trustworthiness of persons who will have access thereto.
- d. Would protect the information at all times.
- e. If the Commission proceeds with its March 17, 1977 proposed amendments to "require certain individuals involved in the operation of nuclear power reactors. . . to receive authorization from the Commission for access to or

control over special nuclear material," the arguments against a classification and security clearance system for LWR security plans will be less persuasive.

- f. Existing federal criminal statutes are in place to deter unauthorized disclosures.

CONS:

- a. The requirement for national security clearances for the sole purpose of having access to LWR security plan information would impose some administrative burdens on licensees and on their employees who thus far have been able to operate without a classification and security clearance system
- b. The mere fact that information is classified does not automatically exempt it from disclosure under FOIA. If a FOIA suit is brought for a classified document, the judge has a duty to determine whether such documents are properly classified. (In most instances, however, courts have been reluctant to second-guess the classifications imposed by the Government).
- c. Classification of LWR security plans under Executive Order 11652 might be viewed as an unreasonable extension of that authority which provides that "Official information or material which requires protection against unauthorized disclosure in the interest of national defense or foreign relations of the United States. . . shall be classified . . ." The information in LWR security plans is privately produced for the protection of a particular nuclear plant. Though "not free from doubt" careful consideration of this question in 1975 and 1976 by a National Security Council Task Force and Department of Justice resulted in the conclusion that: There is "a reasonable basis for the legal conclusion that plans may be classified in appropriate cases."

2. SEEK LEGISLATION WHICH SPECIFICALLY PROTECTS
LWR SECURITY PLANS FROM DISCLOSURE

Exemption (b)(3) of the FOIA (5 U.S.C. 552(b)(3)) protects information from disclosure which is "specifically exempted from disclosure by statute (other than the FOIA), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld."

This exemption permits the government to withhold information from disclosure under the FOIA where another law clearly requires that it be withheld. There is no such other law which directs that LWR security plans be withheld from disclosure. Legislation of this type has recently been enacted to provide for non-disclosure of information which, in the opinion of the Administrator of the Federal Aviation Administration "would be detrimental to the safety of persons traveling in air transportation." (Public Law 93-366, August 5, 1974, amending the Federal Aviation Act of 1958, 49 U.S.C. 1357(d)(2), 81 STAT. 54).

An amendment to Section 181 of the Atomic Energy Act could exempt LWR security plans from disclosure for FOIA purposes. For such an amendment to also assure that LWR security plan information which becomes involved in adjudicatory proceedings is properly protected with minimum impairment of procedural rights it must in effect provide either (a) for the classification of the plans; or (b) for the treatment of the plans, for section 181 purposes, as if they were classified.

PROS:

- a. From the legal standpoint, the authority would be explicit and would invoke an exemption in the FOIA which would not likely result in a judge second-guessing decisions to withhold.
- b. Would permit a flexible approach which would permit the adoption of a carefully tailored protection program which is deemed necessary

but without the necessity of invoking a federal classification and security clearance system solely for the protection of LWR security plans.

CONS:

- a. Legislation would be required. There is no way to predict with reasonable certainty what the final legislative product might be or when the legislative process would be completed.
- b. Legislation which would allow sensitive but non-classified information to be treated as classified information for §181 purposes could be viewed as a drastic proposal. (To be effective, such legislation would have to provide authority to invoke clearance procedures prior to the access to the sensitive information.)
- c. The need for such legislation might be difficult to justify in view of: (1) the Commission's authority to classify information; (2) the authority in Section 181 which is available if the plans are classified; and (3) a Commission decision (as proposed on March 17, 1977) to use a personnel security program for those persons involved in the operation of nuclear power reactors having access to or control over special nuclear material.
- d. The mere act of seeking such legislation may make any effort to continue to protect the plans under existing authority more vulnerable if challenged. For example, the justification for the legislation will depend to some extent on an argument that other methods of protection are inadequate.

3. CONTINUE WITH THE PRESENT SYSTEM

LWR security plan information is deemed by the Commission's regulations (10 CFR 2.790(d)) to be commercial or financial information thus bringing that information within the FOIA exemption (522(b)(4)) for confidential business information.

This FOIA exemption pertains to information concerning trade secrets and confidential commercial or financial data. Commercial and financial information includes things such as corporate sales data, salaries and bonuses of industry personnel in the course of their acquisitions. However, commercial and financial information other than trade secrets can be withheld from disclosure only if it meets certain criteria, namely: it must be privileged and confidential; and it must be obtained from a person by the Government. Courts have defined "confidential" information as that information which if disclosed would be likely to: (1) impair the government's ability to obtain similar information in the future; or (2) harm the competitive position of the person who supplied it.

The consensus of judicial opinion is that this exemption in the FOIA does not apply to general information obtained by the Government with the understanding that it will be held in confidence.

From the foregoing, it is readily apparent that the desirability of continued long-term treatment of LWR security plans as proprietary information is not completely free from doubt. Although a Federal District court has sustained the present system for exempting these plans from disclosure,^{3/} it is uncertain whether the Courts would uphold the Commission's use of the proprietary designation in this manner in the face of a determined legal challenge. This uncertainty has created concern for most of the utility companies responsible for the physical security of nuclear reactors. In this regard, Northern States Power Company and Wisconsin Electric Power Company on June 2, 1977 petitioned the Commission to change its regulations so that LWR security plans would be classified. Although public comments have been received on the petition, no action has been recommended to the Commission on its disposition. (Docket No. PRM 50-21, 42 FED. REG. 37458, July 21, 1977). Staff recommendations on the petition are awaiting the reply to former Chairman Rowden's letter of June 30, 1977

^{3/} Porter County Chapter Izaak Walton League v. AEC, 380 F.Supp. 630 (N.D. IND., 1974).

to Dr. Brzezinski (Appendix B) requesting that NRC be authorized to implement a system of national security classification for the security classification for the security plans for power reactors.

Existing regulations do not provide detailed requirements to assure the protection of a security plan in the adjudicatory process. For example, there are no explicit requirements to assure the trustworthiness of participants in that process (or of anyone else) who must have access to a plan in order to prepare their case with some, but minimum, impairment to their procedural rights. Notwithstanding the protection against the public disclosure of security plans provided by 10 CFR §2.790(d), disclosure to parties under a protective order is authorized, and perhaps required under the present regulations. The provisions of these protective orders are fashioned on a case-by-case basis without the benefit of any detailed guidance in the regulations. They typically allow disclosure to the party seeking the information (and the party's counsel), subject to a limitation on public disclosure. See generally Kansas Gas and Electric Co., ALAB-327, NRC, (April 27, 1976) and Pacific Gas and Electric Co., ALAB-410, NRC, (June 9, 1977). 10 CFR §2.790(b)(6) of the Commission's regulations provides for in camera (not public) hearings when information sought to be withheld is produced. Security plans for LWR's have been disclosed under protective orders in at least five proceedings and the staff is not aware of any violations to date of the terms and conditions of a protective order.

In view of the precise statutory basis for Subpart I in Section 181 of the Atomic Energy Act and the explicit statutory limitation in that section to Restricted Data and national security information, the detailed procedures in 10 CFR Subpart I are not available to protect security plans which are treated as proprietary information. It is highly

questionable in view of the Act's precise treatment of the subject in Section 181 whether the Subpart I procedures (or their equivalent) could be extended to proprietary information under our general rule making authority.

PROS:

- a. System is already in use.
- b. Not aware of any unauthorized disclosures up to now.
- c. System avoids the disadvantages, perceived by some, of imposing a federal classification and federal security clearance system on a commercial activity solely for the protection of LWR security plan information.

CON:

- a. The legal basis for this approach is not completely free from doubt if there is a determined legal challenge to the present system.
- b. Does not provide the same legal basis, as does classification, for assuring the trustworthiness of persons who need to have access to the plans.
- c. Does not provide for penalties which are either as broad in scope or as severe as do the statutes applicable to the unauthorized disclosure of classified information.
- d. Does not provide for highly structured procedures (e.g. Subpart I) (in view of the explicit language in Section 181 of the Atomic Energy Act) to accommodate the competing objectives of protection of the plans in licensing proceedings from unauthorized disclosure, while permitting disclosure, with minimum impairment of procedural rights, to authorized participants who have shown the presiding board that they require access to the information to prepare their case.
- e. May be difficult to justify continuation of this system if the Commission implements its March 17, 1977 proposal for a personnel clearance system

for individuals having access to vital areas as well as special nuclear material, since many of the individuals requiring clearance for access to security plan information would probably have to be cleared in any event for access to special nuclear material.^{4/}

- 4/ Public Law 93-377 amended the Atomic Energy Act (section 161i) to give NRC specific authority to require clearances for individuals who perform activities which afford access to or control over SNM. On March 17, 1977, the Commission, pursuant to this authority, published a proposed new Part 11 "Criteria and Procedures for Determining Eligibility for Access to or Control over Unclassified Special Nuclear Material" (SECY 76-508). Final rulemaking action has not yet been completed on the proposed part in view of the public comments received on the proposed rules (SECY 77-425).

As a separate matter, the Commission has previously decided (SECY 76-416B) that means be provided for licensees to have access to classified information pertinent to the protection of their facilities. This would be accomplished by publications of Parts 25 "Access Authorization For Licensee Personnel" and 95 "Facility Approval and Safeguarding of National Security Information" in the Commission's regulations. The Staff has not yet submitted proposed Parts 25 and 95 to the Commission for its approval.

Although proposed Parts 25 and 95 concern only classified information, they relate in a practical sense somewhat to the proposed clearance rule (Part 11) for persons having access to or control over special nuclear material. Practically speaking there may be a considerable number of persons requiring only SNM access authorization (Part 11). It has been estimated that at a typical nuclear power reactor unit, approximately 100 individuals would be subject to the SNM clearance program (SECY 76-508), and about 40 individuals would require clearance for access to classified security plan information (SECY 76-283). However, there would be very few persons at a nuclear plant (i.e. of the 40) who would require only access to classified physical security plan information without having access to or control over SNM. The few exceptions might involve personnel who handle classified physical security plan information in a managerial-administrative (e.g. : clerical) fashion.

Accordingly, if NRC adopts a clearance program for persons having access to or control over SNM, it is anticipated that most individual applications for information access authorizations will be combined with requests for SNM access authorization. From the standpoint of administrative burdens, there would be an incremental burden imposed on licensees (and the employees involved) to the extent that some employees would have to be cleared for the sole purpose of having access to classified security plan information. In addition, the Commission would have to publish proposed Parts 25 and 95 (or their equivalent) to establish the administrative requirements and procedures for clearance for access to information and for the physical protection of classified information.

4. STRENGTHEN EXISTING SYSTEM BY EXERCISING RULE-
MAKING AUTHORITY.

From the legal standpoint the present system for protecting LWR security plans could be strengthened to some extent by additional regulatory requirements which can be imposed under existing rulemaking authority. The Commission could publish regulations, or issue orders, requiring licensees or applicants to protect security plans. These regulations could require licensees, for example, to withhold their security plans from disclosure, to store them in safes, and to limit their distribution to employees who (a) require the information in the course of employment and (b) have been determined to be trustworthy.

Existing authority can also be used to develop and publish criteria which would reduce the scope of information in LWR security plans that needs to be protected and require the separation of the sensitive portions in an appendix to the plan.

PROS:

1. Should enhance protection.
2. Should strengthen NRC's reliance on the proprietary information exemption for the protection of security plan information in NRC's hands.
3. Better identification of sensitive information in a security plan which must be protected.
4. Can accomplish under existing authority.

CONS:

Same as the Cons given under Alternative 3.

5. REQUIRE THAT SENSITIVE SECURITY PLAN INFORMATION
BE KEPT IN LICENSEE'S POSSESSION

This approach would provide that the licensee keep in its possession and protect from disclosure all of the sensitive LWR security plan information. The staff would review that information only at the licensee's site. There would be no sensitive security plan information in NRC's possession and

therefore no documents containing such information would be subject to a FOIA request. If such information were requested in an adjudicatory proceeding, its access could be limited to persons found to be trustworthy since there is no legal right under the Administrative Procedure Act to discovery in an adjudicatory proceeding.

PROS:

1. Would circumvent the issue which could arise if there is a determined FOIA challenge to the proprietary exemption.
2. Could accomplish under existing authority.

CONS:

1. Added administrative burdens (time and money) placed on staff because of necessity to visit licensee's site to review sensitive security plan information.
 2. Would not provide much, if any, greater protection than the existing system for protecting sensitive security plan information in adjudicatory proceedings.
 3. Would in effect provide for staff review on the basis of an application which is not complete.
6. GENERIC HEARING FOR EXPLORING SITE-SECURITY-PLAN REQUIREMENTS AND THE METHODS BY WHICH THESE PLANS ARE REVIEWED BY NRC.
- Two members of the Appeal Board who provided additional comments in ALAB-410 suggested a generic hearing as an approach which would permit public participation without revealing the complete sensitive details of any particular plant's security plan. This approach would be essentially as follows:
- a. Conduct a generic rule making hearing for the purpose of dealing with the following issues:
 1. The generic considerations (none of which are site specific) of the methodology and equipment available for physical security protection.

The generic rule making proceeding would be conducted by an ad hoc presiding board designated by the Commission. The board would consist of some three to five members who have national reputations as experts in the physical security field. One of the members shall be qualified in the conduct of administrative proceedings.

Members of the public would be offered an opportunity to participate in the rule making proceeding which, for the most part at least, would be public unless the need arises for sensitive generic information to be discussed.

Upon completion of the rule making proceeding, the Commission would adopt a regulation on LWR physical security plans.

- b. The staff would evaluate a physical security plan for a specific site to determine whether the plan satisfies the requirements of the regulations.

The staff would be assisted in its review of specific plans by an independent advisory panel of experts who would review each specific plan and issue a report on whether the plan satisfies the requirements of the Commission's regulations. This advisory panel would be composed of recognized experts on physical security who need not be the same as the individuals serving on the ad hoc board which conducted the generic rule making proceeding. The membership on the panel should include representatives of federal, state and local authorities whose assistance may be called for the security plan. The Advisory Committee on Reactor Safeguards, supplemented by necessary consultants, could perform this review function.

- The advisory review panel would prepare a report to the Commission on each security plan which it reviews. The report would be of suitable content so that it would be routinely made available to the public.

- c. If a physical security plan issue is properly raised in adjudications in individual licensing proceedings, an attempt could be made to confine the issues to those which do not go into the sensitive security plan details for the particular site.

PROS:

1. Would probably add credibility to the review process for security plans.
2. May provide for more meaningful opportunity for public participation in the rule making process.

CONS:

1. The regulations for LWR security plans have only recently been established (10 CFR §73.55). This alternative would require that the rule making process be done all over again.
2. There is no assurance that site-specific sensitive security plan issues would not be raised in adjudications. If raised, nothing in this approach would justify ruling them out completely in adjudications. (It is highly unlikely that any generic hearing could be sufficiently comprehensive to foreclose the consideration of site-specific and sensitive issues in individual licensing proceedings).
3. A generic rule making proceeding would require considerable staff resources (time and money).
4. With the exception of having outside experts participate in an advisory capacity, the approach is essentially the same as the present system.
5. There is no reason to believe that experts of the type contemplated would be interested in performing what for the most part would be essentially ministerial tasks.

6. The participation by outside advisory experts would broaden the dissemination of sensitive security plan information.
7. The advisory experts may be subject to being subpoenaed as witnesses in adjudicatory proceedings.

* * * * *

Considering the advantages and disadvantages of the proposed alternative approaches discussed above, together with the Commission's action on a related policy matter, certain observations can be made. The related policy matter is the final action which the Commission will take on the proposed amendments (on March 17, 1977) to its regulations which would establish a personnel clearance system for those individuals involved in the operation of nuclear power plants who have access to special nuclear materials. If this requirement is implemented, it is likely that many of the individuals who must receive security clearance for that purpose would be the same individuals who would require clearance for access to security plans. Since personnel clearances would be required in any event, most of the disadvantages which have been advanced by those who argue against the classification of LWR security plans would become academic. Thus, assuming that the Commission does not depart from the policy in its March 17, 1977 proposal, the classification of LWR security plans is an alternative which would provide some degree of better protection for them without itself creating any significant disadvantages.

If, on the other hand, the Commission decides not to impose personnel security clearance requirements on individuals involved in nuclear power plant operations (i.e. it does not finally adopt its March 17, 1977 proposed amendments), it would seem equally reasonable for the Commission also not to require a classification and security clearance system for LWR security plans. In any event, a good argument can be made for the Commission in its regulations to establish requirements for the protection of LWR security plans in the possession of a licensee (Alternative 4). This can be done by the exercise of the rule making authority currently available to the Commission.

Legislation which specifically protects LWR security plans from disclosure (Alternative 2) would probably provide some additional protection of the information in the event there is a determined legal challenge under the FOIA. On the other hand, this does not mean that the information would also be protected in the adjudicatory process. Protection of the information during the adjudicatory process would require invoking the authority of Section 181 of the Atomic Energy Act. This can be accomplished by two approaches. One approach, which does not require legislation, is to classify the plans. Section 181 authority applies if information is classified. Another approach is to invoke Section 181 authority for sensitive security plan information which is not classified. Legislation would be required to accomplish this approach. A good argument can be made that such legislation would be of a drastic nature. For example, it would permit non-classified LWR security plan information to be treated as classified information in the licensing process. Among other things, this would mean that a personnel clearance program could be established as a pre-requisite for access to the sensitive, but not classified, information.

Coordination:

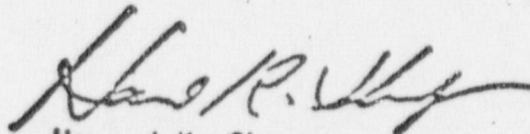
This report was coordinated with the Offices of Nuclear Reactor Regulation, Standards Development, Inspection and Enforcement, Nuclear Material Safety and Safeguards, General Counsel, Policy Evaluation and the Division of Security.

Scheduling:

ELD recommends that this subject be considered in a closed meeting since sensitive site specific aspects of LWR physical security plans may be discussed.

Anticipated
Scheduling

Week of January 9, 1978



Howard K. Shapar
Executive Legal Director

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ATTACHMENT "A"

The Commission has previously considered alternative ways to protect reactor physical security information from public disclosure. For information in the hands of the NRC, the alternative, including the pros and cons, as outlined in SECY 7-283, were:

1) Treatment as proprietary information-

Pro: System already in use

Con: Legally most vulnerable to FOIA

2) Exemption through a statute enacted for this purpose by the Congress-

Pro: 1. Most legally defensible

2. Legislation for similar purposes has been enacted.

Con: Would require a demonstration that other methods are not adequate.

3) Classification as national security information under Executive Order 11652-

Pro: System already in use at NRC

Con: Classification would have to be applied for non-NRC protection.

For information in the hands of licensees and others, alternatives included:

1) Classification under Executive Order 11652-

Pro: 1. Could be enforced on third parties as well as licensees

2. Degree of protection broader than other alternatives.

- Con:
1. Probably imposes the greatest burden on the private sector, though the least burden on NRC
 2. Other methods can be equally effective
 3. Classification questionable for LWRs absent Category 1 and 2 material.

2) Special Legislation-

- Pro:
1. Most legally defensible
 2. Permits most flexibility in design balancing protection, costs and civil liberties
 3. Legislation for similar purposes has been enacted.

- Con:
1. Would require demonstration that other methods are not adequate
 2. Uncertain of achieving legislation.

3) Use of the Commission's current authority under the Act to require clearances for SNM access-

- Pro:
1. Costs would be incurred in connection with implementing authority to require clearance for SNM access in any event
 2. Civil liberties not affected beyond what is necessary for SNM access.

- Con: Cannot assure protection for those persons who have access to plans but not to SNM.

4) Use of the Commission's current authority under the Act to impose license conditions-

- Pro:
1. Least costly of all alternatives
 2. Civil liberties best preserved.

- Con:
1. Cannot assure protection in third party hands
 2. Less assurance of trustworthiness of persons with plans access than other alternatives.

The National Security Council affirmed the Commission's decision to delay its decision concerning reactor security plan classification in National Security Decision Memorandum 347 dated January 20, 1977. Guidance was provided to the staff via Mr. L. V. Gossick's February 8, 1977 and February 28, 1977, memoranda which addressed the subject of implementation of NSDM-347. Consistent with Mr. Gossick's guidance, light water reactor physical security plans were excluded from further classification consideration for "the present time."

On March 17, 1977, proposed amendments to Title 10 of the Code of Federal Regulations were published in the Federal Register. In these amendments, which would add a new Part 11, the Commission proposed, pursuant to its statutory authority under Section 161i of the Atomic Energy Act of 1954, as amended, to "require certain individuals involved in the operation of nuclear power reactors and fuel reprocessing plants...to receive authorization from the Commission for access to or control over special nuclear material." These regulations were proposed "to utilize a personnel security program as a measure to protect against...". The proposed rule would establish a clearance system analogous to the NRC "Q" and "L" clearances although different clearance titles, "U" and "R", are utilized to avoid confusion. The public comment period for the proposed rule expired May 16, 1977. Numerous public comments were received.

While the "clearance program" does not contain all of the necessary elements to deal with the problem of providing adequate protection for nuclear power reactor physical security information, it might provide a substantial framework within which other necessary changes, whose impact would be consequently reduced, could be made.

NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20545

June 30, 1977

Care
Volgenau
Smith
Brady
Shapur
Kinogoe
McCorle
EDO r/f

Allen

OFFICE OF THE
CHAIRMAN

Dr. Zbigniew Brzezinski
Assistant to the President
for National Security Affairs
The White House
Washington, D.C. 20500

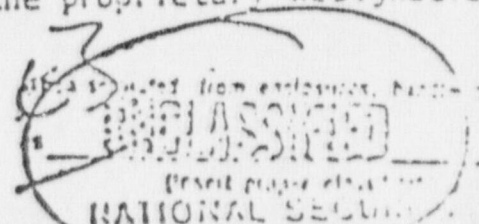
Dear Dr. Brzezinski:

NSDM-347 authorized the classification of sensitive nuclear safeguards information related to significant quantities of strategic nuclear materials but deferred a decision on its applicability to physical security plans of licensed, privately-owned nuclear reactors until completion of the Commission's GESMO (plutonium recycle) proceeding. Because of recent developments, particularly the President's April statements on nuclear non-proliferation and energy, we have again reviewed the question of classifying reactor physical security plans and now recommend that such plans be classified under the provisions of Executive Order 11652 to protect them from unauthorized disclosure.

As I wrote in my letter of August 11, 1976, to Brent Scowcroft, the Commission has considered three alternative ways to protect physical security information:

- Treatment as proprietary information.
- Exemption through a statute enacted for this purpose by Congress.
- Classification as national security information under Executive Order 11652.

While the present system of treating reactor security plans as proprietary information appeared to us to be adequate for a relatively brief interim period, the prospect that this period will be substantially extended calls into question the advisability of continuing to rely on this method of protection. It is uncertain whether the courts would uphold the Commission's use of the proprietary designation.



Dr. Zbigniew Brzezinski

in this manner in the face of a determined legal challenge, a possibility which has created concern for some of the utility companies responsible for the physical security of nuclear reactors. (See the attached petition for rulemaking submitted to the Commission by Northern States Power Company and Wisconsin Electric Power Company on June 2, 1977.) Moreover the use of a proprietary designation does not provide the Commission with a legal basis for taking steps to assure the trustworthiness of utility employees and other private parties having access to the plans. (See the attached opinion of the Atomic Safety and Licensing Appeal Board of June 9, 1977.) Consequently, we believe that we should now seek a more effective means to afford the needed level of protection of these plans.

While a specific legislative exemption from the disclosure provisions of the Freedom of Information Act would obviously be a means of withholding reactor security plans from public requestors, we believe that substantial uncertainties would be associated with any effort to obtain such legislation. To gain Congressional support, it would be necessary to demonstrate that no other means of protecting these plans exist. Since classification is available, and can properly be applied, we doubt that a persuasive legislative case could be made. Such legislation, moreover, would not resolve the most important security concern on our part -- assuring the trustworthiness of utility and other private sector personnel (e.g., architect-engineers) and of licensing hearing participants who now have access to the plans. Hence, we do not believe a legislative approach represents a desirable or effective course.

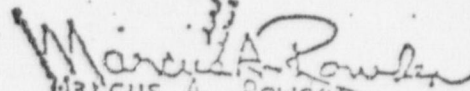
The Commission considers classification to be the soundest available means to protect reactor security plans. As you know, NRC and ERDA are now in the process of consulting with the NSC staff prior to implementing NSDM-347. When implemented, the nuclear industry will be using national security classification to protect the security plans of those facilities where significant quantities of strategic nuclear materials are present. The underlying rationale for such a protective regime extends as well to safeguarding reactor security plans. As Chairman Anders and I have said in earlier letters on this subject (copies of which are enclosed), the national security classification system is well understood by the courts and Congress and provides a fully developed system of government-wide procedures and safeguards. Moreover, the use of a different system to prevent unauthorized disclosure of reactor security plans would lead to a dual regime of control, with some nuclear facility plans being subject to classification and others being subject to another system.

When stamped from enclosure, page 23
61-100000-100000
NATIONAL SECURITY

For the foregoing reasons, the Commission recommends that NRC be authorized to implement a system of national security classification for the security plans of power reactors and other reactors not now covered by the NSDM-347 decision. We urge timely decision on this question since our licensees are now submitting updated detailed security plans as required by our regulations and the Commission will wish to give these plans the maximum possible degree of protection from unauthorized disclosure.

Commissioner Gilinsky does not agree with the above views on this issue. A memorandum setting out his separate views is attached.

Sincerely,


Marcus A. Rowden
Chairman

Enclosures: - *Attachments 6/21 memo for Peterson*
Separate view of Com. Gilinsky
Petition for Rulemaking - 6/2/77
ASLAB Opinion - 6/9/77
Previous correspondence

When separated from enclosures, handle this as

GROUP 1 EXCLUDED

(Insert proper classification)

**NATIONAL SECURITY
INFORMATION**

Unauthorized Disclosure Subject
Criminal Sanctions

SEPARATE VIEWS OF COMMISSIONER GILINSKY

The matter at issue is not whether certain security aspects of private commercial nuclear power plants -- security plans and the like -- should be protected from public disclosure, but rather what is the wisest approach toward achieving this protection -- through Executive Order 11652's classification regime covering national security information, or through discrete statutory authority that clearly distinguishes the nuclear case from other activities.

One approach is to decide that nuclear power plant security information falls within the provisions of Executive Order 11652. This order, however, was designed to protect national security information within the federal government, and the use of authority under the Executive Order to classify private information in the private sector would be unprecedented.* Moreover, the Order defines "national security," narrowly, as the "national defense and foreign policy of the United States." (E.O. 11652, Sec. 1). Its extension to protection of private power plant security plans -- which concern the problem of industrial sabotage with radiological consequences -- raises the possibility that security aspects of other civilian installations which might cause comparable public harm or are especially important economically -- for example, dams, toxic chemical plants or oil pipelines and refineries -- might also be classified under E.O. 11652. We have had enough experience in recent years with abuses of the national security label to warrant great caution in approaching the issue here.

The preferable alternative, in my view, would be to use existing authority under the Atomic Energy Act, which I have discussed in previous correspondence, to impose controls over the disclosure of security plans held by private parties and to ensure the trustworthiness of persons having access to them, as necessary. The Commission, it should be noted,

* The only other case of extension of E.O. 11652 to such information is the classification of security plans of fuel cycle facilities containing significant quantities of nuclear explosive material (NSDM-347) (which I understand is still under NSC review.) There is, however, a sharp distinction between the protection of nuclear explosives and nuclear reactors given the President's indefinite deferral of commercial plutonium separation and recycle in light water reactors. Moreover, the nuclear explosive material in the regulated sector is intimately tied to governmental activities since virtually all such material is government-owned and intended for military use.

recently relied on this very authority in proposing regulations to require security clearances for reactor personnel with access to vulnerable areas of these facilities. This could readily be extended to cover licensee personnel with access to security information. As for the argument that the extension of government imposed national security information controls under E.O. 11652 would be preferable because it would permit application of controls to a larger universe of individuals than if the Atomic Energy Act authority is employed -- to include not only licensee employees but also those of architect-engineers, contractors, and others -- I regard such open-endedness as a drawback.

The only area in doubt under existing authority is our ability to protect the plans, when in government possession, from compelled disclosure under the Freedom of Information Act. This could be remedied through a narrow amendment to the Atomic Energy Act to exempt security plans from such disclosure.* In view of the strong interest Congress has manifested to date in upgraded security at nuclear facilities, I would think this legislation could be justified on the grounds that the continuation of present practice entailed legal uncertainties over the long term and that classification is undesirable. I should add that another way to deal with the FOIA problem would be to provide that the detailed security plans be kept in the licensee's possession (rather than NRC's) and inspected and reviewed by NRC on-site.

Apart from these issues, however, there remains a question, to my mind, as to what level of protection for nuclear power plant security plans is, in fact, warranted. It should be recalled that the Commission originally considered classification of reactor security plans, and an associated clearance program, as a parallel measure to the classification of fuel cycle facility security plans on the assumption that, with the introduction of mixed oxide fuel, reactors, like these facilities, would be handling strategic quantities of nuclear explosive material. In this regard, the Commission in its August 11, 1976, communication to the

* Although, in this regard, I would recall the Commission's August 11 letter to the NSC in which we found the option of continuing with our present practices -- characterizing reactor security plans as proprietary information for Freedom of Information Act purposes and leaving to licensees the trustworthiness of persons with access to such plans -- to be a satisfactory alternative "without significant legal risks" for the duration of the GESMO proceeding, which was then thought likely to continue for possibly two more years.

NSC expressed the view that in the event of "a decision to preclude the use of mixed oxide fuel at reactors, the arguments in favor of other means than classification to protect physical security plans from unauthorized disclosure would, in our view, be strengthened." The Commission, moreover, has not treated reactors as posing as great a security threat to the public as fuel cycle facilities handling nuclear explosive materials -- it has imposed less stringent physical security requirements on the former (protection against fewer assailants is required at reactors than at fuel cycle facilities).

I should add that while I believe it is important that trustworthy persons be employed in key areas of the nuclear reactor facility, I do not think the case has yet been made that a government security clearance program is the best way to achieve this end, as I believe it has with regard to the much smaller number of persons working in fuel cycle plants with access to nuclear explosive material.

ATTACHMENT C

MEMORANDUM FOR CHAIRMAN HENDRIE FM. HOWARD K. SHAPAR

DATED 1/23/78



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

January 23, 1978

MEMORANDUM FOR: Chairman Hendrie

FROM: Howard K. Shapar
Executive Legal Director

SUBJECT: DRAFT AMENDMENTS TO ATOMIC ENERGY ACT ON THE
PROTECTION OF SAFEGUARDS INFORMATION

In your office's memorandum dated January 10, 1978, you requested OELD's views on, and any recommended changes to, two alternative amendments to the Atomic Energy Act the purpose of which is to clarify the Commission's authority to prohibit the disclosure of sensitive safeguards information.

It is not completely clear whether the proposed legislation is intended to address only the protection of safeguards information under the Freedom of Information Act (FOIA) or to go beyond and provide authority for the general protection of such information. The General Counsel's memorandum of December 6, 1977 transmitting the draft legislation to you emphasized that the proposal would provide a statutory basis for non-disclosure of safeguards information in the form of agency records under Exemption 3 of the FOIA. The draft legislation which he transmitted goes further by authorizing the Commission to prescribe regulations as it may deem necessary to prohibit the disclosure of certain safeguards information. This extended scope is appropriate if the Commission wishes to assure protection of safeguards information in non-NRC hands as well as in NRC hands.

Neither alternative deals explicitly with the matter of the protection of sensitive information in the adjudicatory process if safeguards matters (*i.e.* the adequacy of physical security plans) are at issue. Section 181 of the Atomic Energy Act now provides that in agency proceedings which involve Restricted Data or defense information, the Commission shall provide for such parallel procedures as will effectively safeguard and prevent disclosure of such information with minimum impairment of the procedural rights which would be available if such information were not involved. In consonance with Section 181, the Commission has established detailed parallel procedures which deal

CONTACT: W. C. Parler
49-27527

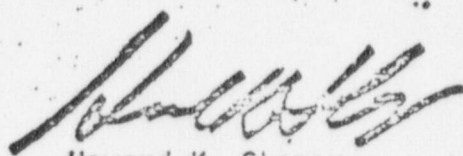
with the disclosure of classified information in its proceedings (10 CFR, Part 2, Subpart I). If the Commission wishes to completely exclude sensitive safeguards information from consideration in its proceedings, it would seem desirable to amend Section 181 to so provide. Such an amendment would seem difficult to justify, however, because the result would be that, as so amended, Section 181 would give greater protection to non-classified sensitive safeguards information in agency proceedings than it now authorizes for classified information. If, on the other hand, the Commission wishes to give sensitive safeguards information the same protection in its proceedings as it is now authorized to give classified information, Section 181 should be amended to so provide. Thus, in view of the precise focus of Section 181, any legislative proposal designed to protect safeguards information in agency proceedings should, in my view, amend that section.

Prior litigation strongly suggests that if regulations issued under general authority are to apply to persons who are not licensed by the Commission, as well as to those who are, the authorizing legislation should specifically so provide. See e.g. Reynolds v. United States, 286 F.2d 433, 438 (9th Cir. 1960). Safeguards information requiring protection may be in the hands of others (e.g. architect-engineers, construction contractors and security-system vendors) than NRC licensees. The legislation should provide specifically that the regulations which it authorizes the Commission to prescribe to protect safeguards information apply to any person who has possession of safeguards information, whether or not as a licensee of the Commission.

The General Counsel indicated in his memorandum of December 6, 1977 to you that neither of the proposed amendments expressly covers security clearances and that a specific authorizing amendment would be preferable for Commission regulations that required clearances for access to safeguards information that was not classified under Executive Order 11652. If the Commission wishes the legislation to provide authority to assure protection of safeguards information in non-NRC hands, the authority to require clearances for access to such information is a vital link to assure that it is not improperly disclosed.

If the Commission desires legislation of the extended scope noted above, the legislation should be written to provide for enforcement powers in the event there is a violation of a regulation adopted under its authority. It would seem in this regard that any person violating the regulations against disclosure should at least be subject to the civil monetary penalties of Section 234 of the Atomic Energy Act. The Commission may wish to consider also whether any of the criminal sections of that Act should be made applicable to anyone who violates those regulations.

If the intent of the proposed legislation transmitted to you on December 6, 1977, is to provide authority to the Commission so that it can publish regulations which will fully protect sensitive safeguards information, Alternative 2, with the changes to accommodate the matters noted above, would be the preferred alternative because of its broader scope.1/ A revised comparative Draft "A" which reflects all of the foregoing comments as well as other perfecting drafting changes is attached. If, on the other hand, the Commission wishes the legislation only to provide a statutory basis which invokes exemption 3 of the FOIA, a different approach should be followed. Draft "B" is legislation which would accomplish only the latter objective.



Howard K. Shapar
Executive Legal Director

Attachments:

1. Revised Draft "A" -
COMPARATIVE TEXT
TO ALTERNATIVE 2
Draft "B" - LEGISLATION
WHICH ONLY INVOKES
EXEMPTION 3 TO THE
FOIA
2. Memorandum For Howard K.
Shapar dtd. 01/10/78 fm.
Donald F. Hassell

cc w/attachments:

Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
L. V. Gossick, EDO
J. Nelson, GC
K. Pedersen, OPE
S. Chilk, SECY

I It is noted that the Executive Branch's latest draft of an amended Executive Order 11652 which authorizes classification of national security information would allow the classification of any information the disclosure of which "could reasonably be expected to: Significantly diminish the effectiveness of U. S. Government programs for safeguarding nuclear materials or facilities."

REVISED DRAFT "A"

COMPARATIVE TEXT
TO ALTERNATIVE 2

1. "Sec. 147. Safeguards Information -

- a. In addition to any other authority or requirement regarding protection or disclosure of information and notwithstanding Section 552 of title 5, United States Code, relating to the availability of records, the Commission shall prescribe such regulations as it may deem necessary to prohibit disclosure of information concerning:

~~["a.---Control-and-accounting-procedures,-including-but not-limited-to-inventory-discrepancy-data-generated under-such-procedures,-for-quantities-of-special nuclear-material-which-in-the-opinion-of-the Commission-are-of-significance-to-the-common defense-and-security.~~

~~"b.---Measures-for-the-physical-protection-of (1)--quantities-of-special-nuclear-material-which-in the-opinion-of-the-Commission-are-of-significance to-the-common-defense-and-security,-by-whomever possessed-at-fixed-sites-or-in-transit,-or-for the-physical-protection-of-nuclear-facilities- (i.e.,-production-or-utilization-facilities-or any-other-facilities-or-activities)-involving such-quantities-of-material.~~

(2)--licensees, privately-owned nuclear reactors;
(3)--any other activity involving source, byproduct
or special nuclear materials which, in the
opinion of the Commission, may affect public
health and safety or be of significance to the
common defense and security,

if disclosure of information concerning such measures
may be reasonably expected to facilitate theft,
diversion or sabotage.

Nothing in this section shall be construed to authorize the
withholding of information from the duly authorized Committees
of Congress] relating to special nuclear material; source
material, byproduct material, any utilization facility or pro-
duction facility, licensed by the Commission, if, in the judgment
of the Commission, the disclosure of such information could
adversely affect the health and safety of the public or the
common defense and security by facilitating theft, diversion or
sabotage of such material or facility. Violation of any regu-
lation adopted under this section by any person, whether or not
a licensee of the Commission, shall be subject to the civil
monetary penalties of Section 234 of this Act. Nothing in this
section shall be construed to authorize the withholding of in-
formation from the duly authorized Committees of the Congress.

- b. The Commission is authorized to prescribe such regulations or orders to assure that information which is protected under this section is disclosed only to persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to have access to such information will not adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of special nuclear material, source material, byproduct material, any utilization facility or production facility, licensed by the Commission.

(all new: not covered in Alternative 2)

2. The proviso clause of Section 181 of the Atomic Energy Act of 1954, as amended is amended to read as follows:

Sec. 181. General. ___* * * Provided, however, That in the case of agency proceedings or actions which involve Restricted Data [or], defense information, or safeguards information protected from disclosure under the authority of Section 147 of this Act, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data [or], defense information, or protected safeguards information to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data [or], defense information, or protected safeguards information were not involved.

DRAFT "B"

LEGISLATION WHICH ONLY INVOKES
EXEMPTION 3 TO THE FOIA

Sec. 147 Safeguards Information.____

In addition to any other authority or requirement regarding protection or disclosure of information, and notwithstanding Section 552 of title 5, United States Code, relating to the availability of records, the Commission shall prescribe such regulations as it may deem necessary to prohibit disclosure of agency records relating to special nuclear material, source material, byproduct material, any utilization facility or production facility, licensed by the Commission, if, in the judgment of the Commission, the disclosure of such records could adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of such material or facility. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized Committees of the Congress. Nothing in this section shall be construed to affect in any way any authority otherwise available to the Commission to prescribe by regulation or order requirements for the protection of safeguards information by its licensees.

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



January 10, 1978

OFFICE OF THE
CHAIRMAN

MEMORANDUM FOR: Howard K. Shapar, Executive Director
Office of the Executive Legal Director

FROM: Donald F. Hassell, Legal Assistant *DFH*
to the Chairman

SUBJECT: FOIA EXEMPTION FOR SAFEGUARDS INFORMATION

Chairman Hendrie would like OELD's views on the two alternative amendments to the Atomic Energy Act drafted by OGC regarding the above-captioned matter (see enclosure). Also, he wants you to provide any recommended changes.

Enclosure:
Memo fm JNelson to
Chairman Hendrie dtd 12/6/77

cc w/o enclosure:
Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
Ken Pedersen, OPE
S. Chilk

cc w/enclosure:
L. V. Gossick

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

DEC 6 1977

MEMORANDUM FOR: Chairman Hendrie
FROM: Jerome Nelson, General Counsel
SUBJECT: FOIA EXEMPTION FOR SAFEGUARDS INFORMATION

EC 77-8:3

Our approach to this matter has been to draft an amendment to the Atomic Energy Act that would enable the NRC to require that safeguards information not be disclosed. Such information, in the form of agency records, would therefore be exempt from required disclosure under the FOIA by virtue of Exemption 3.

Two alternatives are attached. Alternative 1 covers information which concerns physical protection of nuclear facilities or activities and which is sensitive because of public health and safety concerns. Alternative 2 is more comprehensive. It covers, in addition, safeguards information that is sensitive from a common defense and security standpoint (e.g., information regarding fuel facilities handling strategic special nuclear material). In either case, existing authority to classify information under E.O. 11652 is not affected.

The purpose of these legislative proposals is to clarify the Commission's authority to prohibit/prevent the disclosure of sensitive security information. The provisions do not expressly cover security clearances, and a specific authorizing amendment would be preferable for Commission regulations that required clearances for access to safeguards information that was not classified under E.O. 11652.

cc: Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
Ken Pederson, OPE
SECY (2)

CONTACT:
C. W. Reamer
634-1465

*Sec. 147. SAFEGUARDS INFORMATION.--In addition to any other authority or requirement regarding protection or disclosure of information, and notwithstanding Section 552 of title 5 relating to the availability of records, the Commission shall prescribe such regulations as it may deem necessary to prohibit disclosure of information concerning measures for the physical protection of:

"a. licensed, privately owned nuclear reactors;

"b. any other activity involving source, byproduct or special nuclear material which in the opinion of the Commission may affect public health and safety,

if disclosure of information concerning such measures may be reasonably expected to facilitate theft, diversion or sabotage. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized Committees of the Congress.

"Sec. 147. SAFEGUARDS INFORMATION.--In addition to any other authority or requirement regarding protection or disclosure of information and notwithstanding Section 552 of title 5 relating to the availability of records, the Commission shall prescribe such regulations as it may deem necessary to prohibit disclosure of information concerning:

"a. Control and accounting procedures, including but not limited to inventory discrepancy data generated under such procedures, for quantities of special nuclear material which in the opinion of the Commission are of significance to the common defense and security.

"b. Measures for the physical protection of

(1) quantities of special nuclear material which in the opinion of the Commission are of significance to the common defense and security, by whomever possessed at fixed sites or in transit, or for the physical protection of nuclear facilities (i.e., production or utilization facilities or any other facilities or activities) involving such quantities of material;

(2) licensed, privately owned nuclear reactors;

(3) any other activity involving source, byproduct or special nuclear materials which, in the opinion of the Commission, may affect public health and safety or be of significance to the common defense and security,

if disclosure of information concerning such measures may be reasonably expected to facilitate theft, diversion or sabotage.

Nothing in this section shall be construed to authorize the withholding of information from the duly authorized Committees of the Congress.

March 6, 1978

SECY-77-6113

UNITED STATES
NUCLEAR REGULATORY COMMISSION

For:

The Policy Cover

POLICY SESSION ITEM

From:

Howard K. Shapar
Executive Legal Director

Thru:

Lee V. Gossick, Executive Director for Operations

Subject:

DRAFT AMENDMENTS TO ATOMIC ENERGY ACT ON THE PROTECTION
OF SAFEGUARDS INFORMATION AND RELATED MATTERS

Purpose:

To present to the Commission, as requested, refinements
in the draft legislation which the Chairman requested
on this subject.

Discussion:

In its consideration of this subject on February 21, 1978
(SECY 77-611A), the Commission asked the staff to consider
possible refinements in the draft legislation in certain
discrete areas.* This paper is responsive to that request.

The draft legislation with the refinements is in Attachment
A. The changes which have been made to the draft legislation
forwarded to the Commission in SECY 77-611A are as set forth
in the comparative text in Attachment B. A comparative text
of changes to existing law is in Attachment C.

The draft legislation in SECY 77-611A consisted of: (1) A new
section 147 to the Atomic Energy Act which would authorize
the Commission to protect unclassified safeguards information
from unauthorized public disclosure; (2) An amendment to
Section 161i. of the Atomic Energy Act which would authorize
the Commission to establish a clearance program for access
to such safeguards information and to sites on which activities
licensed by the Commission are conducted; and (3) An amendment
to Section 181 of the Atomic Energy Act to extend its special
procedures for handling classified information in agency
proceedings to unclassified safeguards information which needs
to be protected from unauthorized disclosure.

Possible refinements to the draft legislation suggested for
consideration at the February 21, 1978 Commission meeting
were directed to the proposed section for the protection
of unclassified safeguards information and the additional
authority for clearance programs. The refinements to these
sections will now be discussed. There are no suggested
substantive revisions to the proposed amendments to Section
181 of the Atomic Energy Act.

Contact: Howard K. Shapar, ELD
49-27308
William C. Parler, OELD
49-27527

ATTACHMENT E

* See SECY memo to EDO, 3/2/78

A. Section 147 - Protection of Safeguards Information

1. A major refinement suggested was that this section should be more definitive on the kind of unclassified safeguards information which should be protected. This has been accomplished by adding the underscored language in Section 147 in Attachment B. The added words explicitly provide that the information to be protected from unauthorized disclosure is safeguards information relating to the protection of any facility licensed by the Commission against sabotage of any type. The added words also would afford such protection to information relating to the control, accountability or to physical protection against theft, diversion, or sabotage of any type, of any nuclear materials licensed by the Commission, whether in transit or at fixed sites. The safeguards information may include information pertaining to security plans and plant equipment used for the protection of such materials and facilities against theft, diversion, or sabotage of any type. The protection of such safeguards information from unauthorized disclosure would also (as in the draft legislation in SECY 77-611A) require a judgment by the Commission that such disclosure could adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion, or sabotage of any type, of nuclear material or facility licensed by the Commission.
2. The adequacy of the draft's coverage of nuclear materials in transit was also discussed at the February 21 meeting. Although that draft did not reference explicitly nuclear materials in transit, such materials would have been covered by the authority to protect unclassified safeguards information. On the other hand, although not needed, explicit reference in the language to nuclear materials in transit can be easily included to eliminate completely any doubt which might exist in this regard. Language making such a reference has been added to the refined draft.
3. The staff was also asked to explore whether reference should be made to the common defense and security as well as to the public health and safety in the proposed legislation.

It is our understanding that a reason for this question being raised is, superficially at least, the apparent closeness of authority based on common defense and security grounds to the "damage to the national security" test for classification under Executive Order 11652.

Executive Order 11652 provides authority for the classification of national security information and material. Information which meets the criteria for classification under the Executive Order must be classified.

The test for assignment of the lowest classification category under Executive Order 11652, is whether the unauthorized disclosure of official information or material could reasonably be expected to cause damage to the national security.

Proposed amendments to this Executive Order would include as a category which may be considered for classification, information the disclosure of which "could reasonably be expected to" . . . "Significantly diminish the effectiveness of U.S. Government programs for safeguarding nuclear materials or facilities." Information which falls into this category could not be classified unless it is also determined that "the disclosure of such information could reasonably be expected to cause at least significant damage to the national security."

The words "the common defense and security" and "damage to the national security" are of course different and are used in different contexts. The words "damage to the national security" are used in an Executive Order the sole purpose of which is to establish requirements for the classification of national security information and material. The words "the common defense and security" are frequently used in the Atomic Energy Act of 1954 and, along with "the public health and safety" are the two bedrocks of this Commission's statutory regulatory authority over nuclear materials and facilities. The words "common defense and security" as used in the Atomic Energy Act have been construed by one court as follows:

... the internal evidence of the [Atomic Energy] Act is that Congress [in including the common defense and security in the Act] was thinking of such things as not allowing the new industrial needs for nuclear materials to preempt the requirements of the military; of keeping such

materials in private hands secure against loss or diversion; and of denying such materials and classified information to persons whose loyalties were not to the United States. Siegel v. Atomic Energy Commission, 400 F.2d 778, 784 (CA DC 1968)

On the other hand, the words "damage to the national security" do not appear to be used as words of art which have any particular distinctive meaning other than the message which they communicate. In any event, the "damage to the national security" test required for the classification of national security information under Executive Order 11652, as well as under the proposed amendment thereto, is unquestionably explicitly more restrictive, because of the finding required, than the unqualified "common defense and security" authority which the Atomic Energy Act of 1954 bestows on the Nuclear Regulatory Commission for regulatory purposes.

For some decades, Executive Order 11652 and its predecessors have provided the general authority to classify national security information and material. If information could not be classified as national security information under Executive Order 11652 or its successor, it is extremely doubtful whether classification for that purpose could otherwise be given in the absence of explicit statutory authority. Reference to the common defense and security in the draft legislation was not intended to give such authority and, in our judgment, those words, if used in the draft legislation, could not be reasonably invoked for that purpose.

With this background, we consider, as requested, whether "the common defense and security" should be referenced in the proposed legislation. There are a number of factors, which we will now consider, suggesting that it would be advantageous to include these words.

- . The substantive statutory authority to license
- . and regulate special nuclear material, source material, byproduct material, production facilities and utilization facilities under

the Atomic Energy Act of 1954 rests on both public health and safety and common defense and security grounds.

- . Historically, the need for the safeguards program has relied heavily on the common defense and security ground.
- . The Commission's regulations applicable to the nuclear materials and facilities it licenses invoke both public health and safety and common defense and security grounds.
- . The ultimate test of the Commission's authority to protect unclassified safeguards information from unauthorized disclosure will probably be in an attack on the reasonableness of the Commission's regulations implementing that authority. The broader the substantive statutory base for these regulations, the better off we will be in defending their reasonableness.
- . Experience has shown that statutory authority which invokes only one of these two grounds (i.e. common defense and security in Section 161i(2) of the Act) doesn't readily cover the entire area which needs to be covered for regulatory purposes.
- . The scope of Executive Order 11652 is not under NRC's control. It may be amended by a President without Congressional approval; its scope, as far as the protection of safeguards information is concerned, may be broadened or narrowed.
- . There may be situations in which safeguards information needs protection and it is not covered by Executive Order 11652 or its successor. Statutory authority based on common defense and security as well as public health and safety grounds would provide a comprehensive and solid basis to protect safeguards information which needs to be protected from unauthorized disclosure.

- . If the statutory authority to be added to the Atomic Energy Act for the protection of safeguards information does not rest on common defense and security grounds, this may be given some weight in the event the classification of such information under Executive Order 11652 or its successor is tested.

On the other hand, there are also factors to support eliminating the reference to common defense and security in the proposed legislation.

- . Safeguards information which the Commission would want to protect solely on common defense and security grounds probably would also have to be classified as national security information under Executive Order 11652 or the pending amendment thereto.
- . In practically every regulatory area, including the protection of safeguards information, it is difficult to construct a regulatory authority need based solely on the common defense and security ground which does not also involve public health and safety considerations.
- . Generally, a regulatory need may be easier to justify on public health and safety grounds than on any commonly accepted meaning of common defense and security.
- . Limiting the authority to protect unclassified safeguards information to public health and safety grounds would not take away from NRC's existing authority under the Atomic Energy Act to regulate nuclear material facilities.
- . Not invoking the common defense and security as a ground for the protection of unclassified information could perhaps avoid issues of whether the information should be classified.

On balance, we believe that the use of both the public health and safety and the common defense and security grounds in the proposed legislation is the preferred approach. The draft legislation in Attachment A continues to refer to both. On the other hand, if the Commission wishes the draft legislation not to refer to the common defense

and security, this could be done simply by striking those words.

B. Amendment to Section 161i - Additional Authority For Clearance Programs

The draft legislation in SECY 77-611A would have amended section 161i by adding language which would have authorized the Commission to establish a clearance program for access to unclassified safeguards information which requires protection from unauthorized disclosure as well as for access to sites at which activities involving licensed nuclear materials or facilities are conducted.

This additional authority would under that draft have been included in Section 161i because that section of the Atomic Energy Act has historically been the statutory basis generally relied on for the safeguards program. It was amended as recently as 1974 by Public Law 93-377 to provide the authority for a clearance program for the proposed rule on access to or control over unclassified amounts of special nuclear material. (42 F.R. 14880, March 17, 1977).

Regardless of where in the Atomic Energy Act the additional authority for clearance programs is placed, the matter of overriding substantive importance is to assure that there is no misunderstanding regarding our existing authority under section 161i(2) to clear persons for access to unclassified amounts of special nuclear material as stated in the proposed rule which is still involved in a rule making proceeding. This need is not affected one way or the other by where the Atomic Energy Act is amended to provide the additional authority for clearance programs.

Although, for the reasons stated, amending section 161i to provide such authority, as proposed in the draft legislation in SECY 77-611A, is an entirely acceptable approach, this is not the only approach. Another acceptable approach is to separate the authority for a clearance program for access to unclassified safeguards information which must be protected from unauthorized disclosure from similar authority for access to nuclear materials and facilities.

Considering the foregoing, the following refinements have been made in the SECY 77-611A draft amendment to Section 161i:

1. The authority for a clearance program for access to safeguards information would be included as paragraph b in Section 147 and not in Section 161i. This would place in Section 147 all of the authority relating to the protection of unclassified safeguards information. The additional authority for access to nuclear materials and facilities would be placed in Section 161i.
2. The authority for a clearance program for access to nuclear sites on which licensed activities are conducted has been refined to refer to access to nuclear materials or facilities licensed by the Commission. Such a reference would provide the additional clearance authority which is sought.
3. The SECY 77-611A draft would have added a new 161i(4) to the Atomic Energy Act without changing 161i(2) (which, as stated above, is the statutory basis for the proposed rule on access to unclassified amounts of special nuclear material). At present, Section 161i(2) refers explicitly only to the protection of special nuclear material on common defense and security grounds, although its legislative history also invokes the protection of the public health and safety. The refined legislation (see Attachment A) would amend Section 161i(2) by substituting language giving the Commission the authority to guard against the loss, diversion or sabotage of any type, of any nuclear material or facility which requires a Commission license. This expanded authority, which would also include the specific authority to establish a clearance program for access to such material or facility could be exercised on either health and safety or common defense and security grounds.

Reference to the common defense and security has been retained as the preferred approach for the reasons discussed above. In addition, in view of the controversial nature of any clearance program, it is essential that the statutory authority for it be based on broad grounds. On the other hand, if the Commission wishes the draft amendments giving the additional authority for clearance programs not

to refer to the common defense and security, this can be done provided the common defense and security references in the existing Section 161i(2) are retained. If these references were eliminated, this would weaken the existing statutory basis for the safeguards program and the statutory basis for the proposed rule for access to special nuclear material.

Nothing in the draft legislation would, of course, require the Commission to establish a clearance program for such access. To the extent that the Commission decided to implement such authority, it could do so by rule making.

In summary, the refinements in the draft legislation which have been discussed herein are believed to be responsive to the guidance received as a result of the Commission's consideration of SECY 77-611A on February 21, 1978.

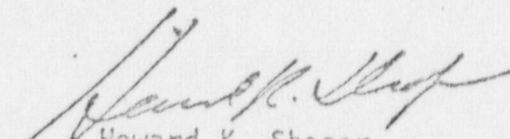
In addition, the refinements herein include a conforming amendment to Section 274m. of the Atomic Energy Act of 1954 which now provides for the retention of the Commission's common defense and security authority in agreement states. Since specific references are now made in Section 274m. to special nuclear material and to the loss or diversion thereof, the conforming amendment would also include references to source material and byproduct material as well as to sabotage of any type.

Finally, it should be noted that Section 161i(2) of the Atomic Energy Act is also the basic authority for the Department of Energy's safeguards program for non-licensed governmental activities. Should the Commission decide to move ahead with proposed legislation amending Section 161i(2), it would probably be desirable to coordinate the proposed amendment to the part of that section on which DOE now relies with that Department.

Coordination:

This paper was circulated to the Offices of NRR, NMSS, SD, and the Division of Security. These offices have concurred in the paper. The paper has been coordinated with OGC and OPE. OGC agrees that the draft legislation in Attachment "A" is responsive to the Commission's guidance at its February 21 meeting and that the public health and safety and common defense and security should be referenced in the proposed legislation. In a memorandum which is attached (Attachment D), OGC also states reservations about the breadth of the draft legislation and says that certain aspects of the legislation will

not be warmly received by some members of the Congress and the general public. In addition, OGC identifies three areas in which features of the proposed legislation must be justified. We agree that these as well as all of the major provisions in the proposed legislation must be adequately justified and a detailed section-by-section analysis will be prepared if the Commission decides to submit legislation to the Congress on this subject. In this regard, there are other examples of provisions which will require careful explanation, such as: the need for authority to institute a clearance program for access to all nuclear material and all facilities for which a Commission license is required; and the need for any additional authority for clearance programs. OPE concurs in the paper.


Howard K. Shapar
Executive Legal Director

Attachments:

- A. Draft Legislation
- B. Comparative Text Showing
Revisions to the Draft
Legislation in SECY 77-611A
- C. Comparative Text of Changes
in Existing Law
- D. OGC Comments

This paper is tentatively scheduled for consideration at an Open meeting during the week of March 13, 1978. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION:

Commissioners
Commission Staff Offices
Exec Dir for Operations
Secretariat

ATTACHMENT A
DRAFT LEGISLATION

ATTACHMENT A

DRAFT LEGISLATION

Add a new Section 147 "Safeguards Information" to the Atomic Energy Act of 1954, as amended, to read as follows:

Sec. 147 Safeguards Information -

a. In addition to any other authority or requirement regarding protection or disclosure of information and notwithstanding Section 552 of Title 5, United States Code, relating to the availability of records, the Commission shall prescribe such regulations or orders as it may deem necessary to prohibit the unauthorized disclosure of safeguards information relating to: (1) the control, accountability and physical protection against theft, diversion, or sabotage of any type, of special nuclear material, source material, or byproduct material, whether in transit or at fixed sites and which requires a Commission license; and (2) sabotage of any type of any utilization facility or production facility, which requires a Commission license. This information may include information pertaining to security plans and plant equipment used for the protection of such materials and facilities against theft, diversion, or sabotage of any type. The exercise of the authority in this paragraph shall require a judgment of the Commission that the unauthorized disclosure of such information could adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of any type of such material or such facility.

b. The Commission is authorized to prescribe such regulations or orders to assure that information which is protected from unauthorized disclosure under this section is disclosed only to persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to have access to such information will not adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion, or sabotage of any type, of such material or facility.

Sec. 2. Subsection [6]i. of the Atomic Energy Act of 1954, as amended, is amended by striking the text after "(2)" through the words "common defense and security" immediately before", and (3)" and substituting the following:

"(i) to guard against the loss, diversion, or sabotage of any type, of any special nuclear material, source material, or byproduct material, utilization facility or production facility, whether in transit or at fixed sites and which requires a Commission license, and to prevent any use or disposition thereof which the Commission may determine could adversely affect the health and safety of the public or the common defense and security; and (ii) to assure that access to special nuclear material, source material, byproduct material or any utilization facility or production facility, licensed by the Commission, is limited to persons, whether employed by a licensee of the Commission or anyone else, whose character, associations,

and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to have such access will not adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of any type, of such material or facility."

Sec. 3. Section 181 of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

Sec. 181. General.____ The provisions of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress, approved June 11, 1946) shall apply to all agency action taken under this Act, and the terms 'agency' and 'agency action' shall have the meaning specified in the Administrative Procedure Act: Provided, however, That in the case of agency proceedings or actions which involve Restricted Data, defense information, or safeguards information protected from disclosure under the authority of Section 147 of this Act, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, or such protected safeguards information to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information or such protected safeguards information were not involved.

Sec. 4. Subsection 274m. of the Atomic Energy Act of 1954, as amended, is amended by revising the first sentence thereof to read as follows:

No agreement entered into under subsection b., and no exemption granted pursuant to subsection f., shall affect the authority of the Commission under subsection 161b. or i. to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss, diversion, or sabotage of any type of special nuclear material, source material, or byproduct material.

ATTACHMENT B
COMPARATIVE TEXT SHOWING REVISIONS TO THE DRAFT
LEGISLATION IN SECY 77-611A

ATTACHMENT B

COMPARATIVE TEXT SHOWING REVISIONS TO
THE DRAFT LEGISLATION IN SECY 77-611A

Add a new Section 147 "Safeguards Information" to the Atomic Energy Act of 1954, as amended, to read as follows:

"Sec. 147. Safeguards Information-

a. In addition to any other authority or requirement regarding protection or disclosure of information and notwithstanding Section 552 of title 5, United States Code, relating to the availability of records, the Commission shall prescribe such regulations or orders as it may deem necessary to prohibit the unauthorized disclosure of ^{Safeguards} information relating to: (1) the control, accountability, and physical protection against theft, diversion, or sabotage of any type, of [to] special nuclear material, source material, or byproduct material [any utilization facility or production facility], whether in transit or at fixed sites [licensed by the Commission] and which requires a Commission license; (2) sabotage of any type of any utilization facility or production facility, which requires a Commission license. This information may include information pertaining to security plans and plant equipment used for the protection of such materials and facilities against theft, diversion, or sabotage of any type. The exercise of the authority in this paragraph shall require a judgment of the Commission that the unauthorized disclosure of such information could adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of any type of such material or such facility.

b. The Commission is authorized to prescribe such regulations or orders to assure that information which is protected from unauthorized disclosure under this section is disclosed only to persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to have access to such information will not adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of any type, of such material or facility.

Sec. 2. Subsection 161i(2) of the Atomic Energy Act of 1954, as amended, is amended by striking the text after "(2)" through the words "common defense and security" immediately before ", and (3)" and substituting the following:

"(i) to guard against the loss, diversion, or sabotage of any type, of any special nuclear material, source material, or byproduct material, utilization facility or production facility, whether in transit or at fixed sites and which requires a Commission license, and to prevent any use or disposition thereof which the Commission may determine could adversely affect the health and safety of the public or the common defense and security: and (ii) ~~and, (4)~~ to

assure that [safeguards information protected under Section 147 of this Act is disclosed only to, and that] access to any special nuclear material, source material, byproduct material or any utilization facility or production facility [site is where activities], licensed by the Commission, [are conducted] is limited to persons, whether employed by a licensee of the Commission or anyone else, whose character, associations and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to have such access [to such information or to such activities] will not adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of any type, of [any] such material or facility. [involved in any activity licensed by the Commission.]

Sec. 3. Section 181 of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

Sec. 181. General. ____ The provisions of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress, approved June 11, 1946) shall apply to all agency action taken under this Act, and the terms 'agency' and 'agency action' shall have the meaning specified in the Administrative Procedure Act: Provided, however, That in the case of agency proceedings or actions which involve Restricted Data, defense information, or safeguards information protected from disclosure under the

authority of Section 147 of this Act, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, or such protected safeguards information to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information, or such protected safeguards information were not involved;

Sec. 4. Subsection 274m. of the Atomic Energy Act of 1954, as amended, is amended by revising the first sentence thereof to read as follows:

No agreement entered into under subsection b., and no exemption granted pursuant to subsection f., shall affect the authority of the Commission under subsection 161b. or i. to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss, diversion, or sabotage of any type of special nuclear material, source material, or by product material.

ATTACHMENT C
COMPARATIVE TEXT OF CHANGES IN EXISTING LAW

ATTACHMENT C

CHANGES IN EXISTING LAW

(NEW LANGUAGE UNDERSCORED; DELETIONS IN BRACKETS)

Sec. 147 Safeguards Information -

a. In addition to any other authority or requirement regarding protection or disclosure of information and notwithstanding Section 552 of Title 5, United States Code, relating to the availability of records, the Commission shall prescribe such regulations or orders as it may deem necessary to prohibit the unauthorized disclosure of safeguards information relating to: (1) the control, accountability and physical protection against theft, diversion, or sabotage of any type, of special nuclear material, source material, or byproduct material, whether in transit or at fixed sites and which requires a Commission license; and (2) sabotage of any type of any utilization facility or production facility, which requires a Commission license. This information may include information pertaining to security plans and plant equipment used for the protection of such materials and facilities against theft, diversion, or sabotage of any type. The exercise of the authority in this paragraph shall require a judgment of the Commission that the unauthorized disclosure of such information could adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of any type of such material or such facility.

b. The Commission is authorized to prescribe such regulations or orders to assure that information which is protected from unauthorized

disclosure under this section is disclosed only to persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to have access to such information will not adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of any type, of such material or facility.

Sec. 161. General Provisions. ____ In the performance of its functions the Commission is authorized to ____

* * * * *

i. prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) (i) to guard against the loss [or], diversion, or sabotage of any type, of any special nuclear material, source material, byproduct material, utilization facility or production facility, whether in transit or at fixed sites and which requires a Commission license, and [acquired by any person pursuant to Section 53 or produced by any person in connection with any activity authorized pursuant to this Act] to prevent any use or disposition thereof which the Commission may determine [to be inimical to the] could adversely affect the health and safety of the public or the common defense and security[.]; [including regulations or orders designating activities, involving

quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security] and (ii) to assure that access to such material or facility is limited to persons, whether employed by a licensee of the Commission or anyone else, whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to have such access will not adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of any type, of such material or facility, and (3) to govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property.

Sec. 181. General. ____ The provisions of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress, approved June 11, 1946) shall apply to all agency action taken under this Act, and the terms 'agency' and 'agency action' shall have the meaning specified in the Administrative Procedure Act: Provided, however, That in the case of

agency proceedings or actions which involve Restricted Data [or], defense information, or safeguards information protected from disclosure under the authority of Section 147 of this Act, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data [or], defense information, or such protected safeguards information to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data [or], defense information, or such protected safeguards information were not involved.

Sec. 4. Section 274. Cooperation With States.

* * * * *

m. No agreement entered into under subsection b, and no exemption granted pursuant to subsection f., shall affect the authority of the Commission under subsection 161b, or i, to issue rules, regulations, or orders to promote the common defense and security, to protect restricted data or to guard against to loss, [or] diversion, or sabotage of any type of special nuclear material, source material, or byproduct material. For purposes of subsection 161i, activities covered by exemptions granted pursuant to subsection f. shall be deemed to constitute activities authorized pursuant to this Act, and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to section 53.

ATTACHMENT D
OGC COMMENTS



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

March 2, 1978

MEMORANDUM FOR: Howard K. Shapar
Executive Legal Director

FROM: *CRS* Carlton R. Stoiber
Assistant General Counsel

SUBJECT: DRAFT AMENDMENTS TO ATOMIC ENERGY ACT ON
PROTECTION OF SAFEGUARDS INFORMATION AND
RELATED MATTERS

We believe that the revised draft legislation (Attachment A to your paper) is responsive to the Commission's guidance and requirements, as expressed in their meeting on February 21, 1978. We also agree with your conclusion that the statutory authorizations sought in the proposed legislation should be footed on both public health and safety and common defense and security grounds. Uncertainty about where public health and safety ends and common defense and security begins gives good reason for not relying on one to the exclusion of the other in this legislation.

As a separate matter, I would like to restate a general observation about the breadth of the draft legislation. Aspects of this legislation will not be warmly received by some members of the Congress and the general public. This legislation seeks, in effect, an exception to the FOIA and authorization for a new clearance program, each of which will be controversial. In this setting, I believe we must be prepared to justify matters such as:

the need to withhold information about or clear people for access to "source material"

the extension of our safeguards authority to "sabotage of any type," rather than the more limited notion of "sabotage which could directly or indirectly endanger the public health and safety by exposure to radiation" (10 CFR 73.2(p))

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634-1465

Howard K. Shapar

2

March 2, 1978

the need to withhold categories of information not now currently protected by Executive Order or regulation (10 CFR 2.790(d)).

As a final matter, you are aware that proposed section 1611(2) alters DOE authority. I would expect OMB will require that we work out arrangements with DOE on the matter.

March 24, 1978

UNITED STATES
NUCLEAR REGULATORY COMMISSION

SECY-77-611C

CONSENT CALENDAR ITEM

For:

The Commissioners

From:

Howard K. Shapar
Executive Legal Director

Thru:

Lee V. Gossick, Executive Director for Operations

Subject:

DRAFT AMENDMENTS TO ATOMIC ENERGY ACT ON THE PROTECTION
OF SAFEGUARDS INFORMATION AND RELATED MATTERS

Discussion:

In their consideration of this subject on March 16, (SECY 77-611B), Commissioners Gilinsky and Bradford asked the staff to prepare alternative draft legislation of narrower scope (than the draft in SECY 77-611B) so that there would be another option to look at when the Commission considers SECY 77-611B. In the development of this option they suggested that it not include source material and that its coverage of byproduct material be narrowed to include only types or quantities of byproduct material which could present a safeguards concern, thereby not affecting the vast majority of byproduct material users.

The changes to the draft legislation responsive to these comments is in Attachment "A". The draft legislation forwarded to the Commission by SECY 77-611B is in Attachment "B".

The changes made in the draft legislation (Attachment A) are as follows:

1. The reference to source material has been deleted in Section 147 (which protects certain safeguards information from disclosure) and from the additional authority for a clearance program in section 161i(2)(ii). The reference to source material has been retained in 161i(2)(i) which is the primary

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49/2-7308

WCParler, OELD
49/2-7527

ATTACHMENT F

authority for our government's safeguards program. Including source material in 161i(2)(i) is consistent with provisions of the Treaty on the Proliferation of Nuclear Weapons, Section 12 of the IAEA Statute, and the recently enacted Nonproliferation Act (Public Law 95-242, March 10, 1978), each of which extends safeguards to source material.

2. In addition, Section 147 has been revised to:

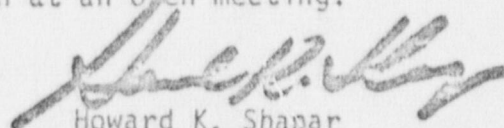
- a. Refer only to safeguards information which identifies a licensee's or applicant's detailed control and accounting procedures or security measures.
- b. Require that the nuclear material being protected is in quantities determined by the Commission to be significant to the public health and safety or to the common defense and security from the standpoint of theft, diversion or sabotage.
- c. No reference is made to security plans or to plant equipment.
- d. References to "sabotage of any type" have been changed to "sabotage".
- e. Language has been added which would require the Commission to tailor carefully any withholding of safeguards information under the new authority so as to apply the minimum restrictions needed to achieve safeguards objectives.
- f. In order to withhold safeguards information from public disclosure, the Commission would be required to reach a judgment that the unauthorized disclosure of safeguards information being protected could have a significant adverse effect on the

health and safety of the public or the common defense and security by substantially facilitating theft, diversion or sabotage of any type. The qualifying words "significant" and "substantial" have been added. With these qualifications, the types and quantities of byproduct material for which the Section 147 authority could be invoked would be narrowed so that the vast majority of byproduct material users (e.g. for medical purposes) would not be affected. .

3. The qualifying words "significant" and "substantial" have also been added to the language in Section 161i(2)(ii) which provides additional authority for access clearance programs to certain licensed nuclear materials and facilities.

Coordination: This paper was circulated to the Offices of NRR, NMSS, SD and the Division of Security. Security prefers the broader approach which would appear to give the NRC more flexibility. NRR's position is that the language in the narrower version of the proposed Section 147 which refers only to "security measures for the physical protection of production or utilization facilities" does not appear to be broad enough. NRR would concur in the narrower version if reference were made to "security measures, security plans, or locations of plant equipment, for the physical protection of production or utilization facilities." SD has no major comments and prefers the narrower version. No comments have been received from NMSS. The paper has been coordinated with OGC and OPE. OGC agrees that the paper presents the requested narrower option. No comments have been received from OPE.

Scheduling: For affirmation at an open meeting.


Howard K. Shapar
Executive Legal Director

Attachments:

- A. Comparative Text Showing
Changes to Draft Legis-
lation in SECY 77-611B
- B. Draft Legislation in
SECY 77-611B

NOTE: Commissioner comments or consent should be provided to the Office of the Secretary by c.o.b. Friday, April 13, 1978.

Commission staff office comments, if any, should be submitted to the Commissioners NLT April 3, 1978, 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.

This paper is tentatively scheduled for consideration at an Open Meeting during the week of April 17, 1978. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION:

Commissioners
Commission Staff Offices
Executive Director for Operations
Secretariat

ATTACHMENT "A"
COMPARATIVE TEXT SHOWING
CHANGES TO DRAFT LEGISLATION
IN SECY 77-611B

(Deletions Lined-Out; Additions Underscored)

Add a new Section 147 "Safeguards Information" to the Atomic Energy Act of 1954, as amended, to read as follows:

Section 147 Safeguards Information -

a. In addition to any other authority or requirement regarding protection or disclosure of information and notwithstanding Section 552 of Title 5, United States Code, relating to the availability of records, the Commission shall prescribe such regulations or orders as it may deem necessary to prohibit the unauthorized disclosure of safeguards

information which identifies a licensee's or applicant's detailed

(1) control and accounting procedures for, or security measures

for the physical protection of, special nuclear material in

quantities determined by the Commission to be significant

to the public health and safety or the common defense and

security from the standpoint of theft, diversion or sabotage,

by whomever possessed, whether in transit or at fixed sites;

(2) security measures for the physical protection of byproduct

material in quantities determined by the Commission

to be significant to the public health and safety or the

common defense and security from the standpoint of theft,

diversion or sabotage, by whomever possessed, whether in

transit or at fixed sites; or

(3) security measures for the physical protection of production or utilization facilities involving nuclear materials covered by paragraphs (1) or (2).

~~relating to--(1)--control, accountability and physical protection against theft, diversion, or sabotage of any type, of special nuclear material, source material, or byproduct material, whether in transit or at fixed sites and which requires a Commission license; and (2)--sabotage of any type of any utilization facility or production facility, which requires a Commission license--This information may include information pertaining to security plans and plant equipment used for the protection of such materials and facilities against theft, diversion, or sabotage of any type.~~ The Commission should exercise of the authority in this paragraph so as to apply the minimum restrictions needed to achieve the objectives of protecting the health and safety of the public or the common defense and security, and shall require a judgment of the Commission upon a determination that the unauthorized disclosure of such information could have a significant adversely-affect effect on the health and safety of the public or the common defense and security by substantially facilitating theft, diversion or sabotage of any type of such material or such facility. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of Section 234 of this Act. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized Committees of the Congress.

b. The Commission is authorized to prescribe such regulations or orders to assure that information which is protected from unauthorized disclosure under this section is disclosed only to persons, whether employed by a licensee of the Commission or anyone else, whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to have access to such information will not have a significant adversely-affect effect on the health and safety of the public or the common defense and security by substantially facilitating theft, diversion, or sabotage ~~of-any-type~~ of such material or facility.

Sec. 2. Subsection 161i. of the Atomic Energy Act of 1954, as amended, is amended by striking the text after "(2)" through the words "common defense and security" immediately before", and (3)" and substituting the following:

"(i) to guard against the loss, diversion, or sabotage ~~of-any-type-of~~ any special nuclear material, source material, or byproduct material, utilization facility or production facility, whether in transit or at fixed sites and which requires a Commission license; and to prevent any use or disposition thereof which the Commission may determine could adversely affect the health and safety of the public or the common defense and security; and (ii) to assure that access to special nuclear material, ~~source-material~~, byproduct material, or any

utilization facility or production facility, licensed by the Commission, is limited to persons, whether employed by a licensee of the Commission or anyone else, whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to have such access will not have a significant adversely-affect effect on the health and safety of the public or the common defense and security by substantially facilitating theft, diversion or sabotage of any-type, of such material or facility."

Sec. 3. Section 181 of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

Sec. 181. General. _____ the provisions of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress, approved June 11, 1946) shall apply to all agency action taken under this Act, and the terms 'agency' and 'agency action' shall have the meaning specified in the Administrative Procedure Act: Provided, however, that in the case of agency proceedings or actions which involve Restricted Data, defense information, or safeguards information protected from disclosure under the authority of Section 147 of this Act, the Commission shall provide by regulation or such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, or such protected safeguards information to unauthorized persons with minimum

impairment of the procedural rights which would be available if Restricted Data, defense information or such protected information were not involved.

Sec. 4. Subsection 274m. of the Atomic Energy Act of 1954, as amended, is amended by revising the first sentence thereof to read as follows: No agreement entered into under subsection b., and no exemption granted pursuant to subsection f., shall affect the authority of the Commission under subsection 167b. or i. to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss, diversion, or sabotage of any-type-of special nuclear material, source material, or byproduct material.

ATTACHMENT B

DRAFT LEGISLATION
IN SECY 77-611B

Add a new Section 147 "Safeguards Information" to the Atomic Energy Act of 1954, as amended, to read as follows:

Sec. 147 Safeguards Information -

a. In addition to any other authority or requirement regarding protection or disclosure of information and notwithstanding Section 552 of Title 5, United States Code, relating to the availability of records, the Commission shall prescribe such regulations or orders as it may deem necessary to prohibit the unauthorized disclosure of safeguards information relating to: (1) the control, accountability and physical protection against theft, diversion, or sabotage of any type, of special nuclear material, source material, or byproduct material, whether in transit or at fixed sites and which requires a Commission license; and (2) sabotage of any type of any utilization facility or production facility, which requires a Commission license. This information may include information pertaining to security plans and plant equipment used for the protection of such materials and facilities against theft, diversion, or sabotage of any type. The exercise of the authority in this paragraph shall require a judgment of the Commission that the unauthorized disclosure of such information could adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or

sabotage of any type of such material or such facility. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of Section 234 of this Act. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized Committees of the Congress.

b. The Commission is authorized to prescribe such regulations or orders to assure that information which is protected from unauthorized disclosure under this section is disclosed only to persons, whether employed by a licensee of the Commission or anyone else, whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to have access to such information will not adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion, or sabotage of any type, of such material or facility.

Sec. 2. Subsection 161i. of the Atomic Energy Act of 1954, as amended, is amended by striking the text after "(2)" through the words "common defense and security" immediately before ", and (3)" and substituting the following:

"(i) to guard against the loss, diversion, or sabotage of any type, of any special nuclear material, source material, or byproduct material, utilization facility or production facility, whether in transit or at fixed site which requires a Commission license, and to prevent any use thereof which the Commission may determine could adversely affect the health and safety of the public or the common defense and security; and (ii) to assure that access to special nuclear material, source material, byproduct material or any utilization facility or production facility, licensed by the Commission, is limited to persons, whether employed by a licensee of the Commission or anyone else, whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to have such access will not adversely affect the health and safety of the public or the common defense and security by facilitating theft, diversion or sabotage of any type, of such material or facility."

Sec. 3. Section 181 of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

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'agency' and 'agency action' shall have the meaning specified in the Administrative Procedure Act: Provided, however, That in the case of agency proceedings or actions which involve Restricted Data, defense information, or safeguards information protected from disclosure under the authority of Section 147 of this Act, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data, defense information, or such protected safeguards information to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information or such protected safeguards information were not involved.

Sec. 4. Subsection 274m. of the Atomic Energy Act of 1954, as amended, is amended by revising the first sentence thereof to read as follows:

No agreement entered into under subsection b.,
and no exemption granted pursuant to subsection f.,
shall affect the authority of the Commission under
subsection 161b. or i. to issue rules, regulations,
or orders to protect the common defense and security,
to protect Restricted Data or to guard against the
loss, diversion, or sabotage of any type, of special
nuclear material, source material, or byproduct
material.

PHYSICAL PROTECTION INSPECTIONS - JULY 1, 1975 TO DEC. 31, 1977

	# OF SITE VISITS	HRS OF SITE TIME	# OF UNANNOUNCED VISITS	ITEMS OF NONCOMPLIANCE
<u>FUEL FACILITIES</u>	95	5,275	89 94%	224
<u>REACTORS</u>				
POWER	296	7,556	254 86%	509
NONPOWER	122	1,836	100 82%	86

		NC/VISIT	NUMBERS GIVEN AT LAST SUBCOMMITTEE MEETING	NC/HOUR
ANNOUNCED	--	0.61 (.37)		0.022 (.0264)
UNANNOUNCED	--	1.75 (1.69)		0.061 (.0588)

SLIDE 1

POWER REACTORS
PHYSICAL PROTECTION NONCOMPLIANCE HISTORY
JULY 1, 1975 TO DEC 31, 1977

<u>CATEGORY</u>	<u>PERCENTAGES</u>
DETECTION AIDS	24% (28)
PHYSICAL PROTECTION: GENERAL REQUIREMENTS AT FIXED SITES	23% (25)
ACCESS REQUIREMENTS	27% (22)
PHYSICAL SECURITY ORGANIZATION	5% (7)
PHYSICAL BARRIERS	3% (6)
RESPONSE REQUIREMENTS	1% (4)
INDUSTRIAL SECURITY PLANS AND CHANGES	2% (2)
TESTING AND MAINTENANCE	7% (2)
COMMUNICATION REQUIREMENTS	2% (2)
RECORDS	6% (2)

SLIDE 2

THREATS OR INCIDENTS INVOLVING NRC LICENSED NUCLEAR FACILITIES

MAY 4, 1969 - FEB. 15, 1978

		<i>number to date</i>	<i>Reported before</i>
• THREATS	159	(140)	
BOMBING INCIDENTS (DEVICES FOUND OR EXPLODED)	4	(3)	
INTRUSIONS	9	(7)	
SHOOTING INCIDENTS	2	(2)	

SLIDE 3

SAFEGUARDS (PHYSICAL PROTECTION) CIVIL PENALTIES

(As of FEBRUARY 17, 1978)

	<u>LICENSEE</u>	<u>PROPOSED AMOUNT (\$)</u>	<u>IMPOSED AMOUNT</u>	<u>ORDER OF IMPOSITION</u>	<u>PAYMENT DATE</u>
FUEL	VALLECITOS	7,500	6,000	12/13/74	12/30/74
FACILITIES	TEXAS INSTRUMENTS, INC.	2,000	PAID WITHOUT IMPOSITION		12/19/74
	BABCOCK & WILCOX, CO. APOLLO & LEECHBURG, PA	26,500	19,000	07/23/76	08/12/76
	NUCLEAR FUEL SERVICES, INC. ERWIN, TENNESSEE	53,000	53,000	08/11/77	08/29/77

*no new civil penalties
since last meeting*

SLIDE 4

SAFEGUARDS (PHYSICAL PROTECTION) CIVIL PENALTIES

(As of FEBRUARY 17, 1978)		PROPOSED	IMPOSED	ORDER OF	PAYMENT DATE
LICENSEE		AMOUNT(\$)	AMOUNT	IMPOSITION	
POWER	NINE MILE POINT 1	8,000	PAID WITHOUT IMPOSITION		9/23/74 (\$4,000-P.S.)
REACTORS	THREE MILE ISLAND 1	4,000	3,500	11/19/74	12/17/74
	NUCLEAR FUEL SERVICES, INC. WEST VALLEY, NEW YORK	4,000	PAID WITHOUT IMPOSITION ORDER		11/15/74
	GENERAL ELECTRIC COMPANY - MIDWEST FUEL RECOVERY PLANT - MORRIS, ILLINOIS	5,000	5,000	12/26/74	01/08/75
	DRESDEN 1, 2, 3	25,500	PAID WITHOUT IMPOSITION ORDER		12/20/74
	MAINE YANKEE	7,250	4,000	03/20/75	04/15/75
	SURRY 1 AND 2	12,000	10,000	03/19/75	04/08/75
	MILLSTONE POINT	11,500	7,500	07/18/75	08/11/75
	BRUNSWICK, UNIT 2	7,000	5,000	02/18/76	03/05/76
	THREE MILE ISLAND 1	8,000	8,000	04/23/76	05/24/76
	OYSTER CREEK	8,000	PAID WITHOUT IMPOSITION ORDER		07/14/76
	FITZPATRICK	21,000	18,000	08/31/76	09/21/76
	FT. ST. VRAIN	8,000	PAID WITHOUT IMPOSITION ORDER		05/27/77

SLIDE 5

J. MILLER NRC
2/22/18

SUMMARY OF IMPLEMENTATION OF 73.55

PHASE I	Review Amended Security Plan (ASP) Staff questions & comments Site visit/evaluation Mtg. with licensee
PHASE II	Review Modified Amended Security Plan (MASP) Site visit or Licensee Mtg.
PHASE III	Pre-implementation inspection (I & E) MASP into effect

STATUS

1/6/77

28 MASP'S RECEIVED

REVIEW OF FIRST SET UNDERWAY STAFF

ADDITIONAL QUESTIONS/POSITION
NECESSARY FOR NEARLY ALL SUBMITTALS

ONLY A FEW SECOND SITE VISITS
(OPTIONAL) PLANNED.

PHASE II
MILESTONES

- 1- MASP DUE TO NRR
- 2- MASP REVIEW BEGINS
- 3- DRAFT OF SPER COMPLETED
- 4- ADDITIONAL QUESTIONS/POSITIONS TO LISCENSEES
(IF REQUIRED)
- 5- LICENSEE RESPONSE RECEIVED (IF REQUIRED)
- 6- BEGINNING OF MANAGEMENT REVIEW/SITE VISIT
(IF NECESSARY)
- 7- COMPLETION OF MANAGEMENT REVIEW/SPER
COMPLETE

PHASE II REVIEW

TEAM	PLANT SITE	MASP DUE	MASP REVIEW BEGIN	DRAFT SPER COMPLETE	MANAGEMENT REVIEW/ SITE VISIT		MANAGEMENT REVIEW/ SPER COMPLETE
TEAM NO. 4 W. D. Lanning	MONTICELLO	11-03-77	11-21-77	01-13-78	03-13 →	17-78	04-03-78
	ZION	12-01-77	01-16-78	02-03-78	03-20 →	24-78	04-17-78
	MAINE YANKEE	01-15-78	02-06-78	02-17-78	03-27 →	31-78	05-01-78
	PRAIRIE ISLAND	01-02-78	02-20-78	03-03-78	04-03 →	17-78	05-15-78
	LACROSSE	02-02-78	03-06-78	03-17-78	04-10 →	14-78	05-29-78
	DRESDEN	02-01-78	03-20-78	03-31-78	04-17 →	04-21-78	06-12-78
	QUAD CITIES	12-02-77	04-03-78	04-14-78	04-24 →	28-78	06-19-78
	WATTS	03-02-78	07-14-78	07-28-78	07-31 →	08-05-78	08-10-78
TEAM NO. 5 W. Pasedag	BROWNS FERRY	09-16-77	11-14-77	02-27-78	02-27 →	03-06-78	03-06-78
	SEQUOYAH	12-22-77	11-21-77	06-12-78	04-10 →	14-78	04-21-78
	NORTH ANNA	11-30-77	01-02-78	05-01-78	05-01 →	05-08-78	05-08-78
	OCCONEE	11-19-77	01-23-78	04-10-78	04-10	04-12-78	04-12-78
	MCGUIRE	12-09-77	01-23-78	08-22-78	05-22 →	05-29-78	05-29-78
	SURRY	11-30-77	03-20-78	03-20-78	03-20 →	03-27-78	03-27-78
TEAM NO. 6 E. McPeck	H. B. ROBINSON	10-03-77	11-29-77	12-23-77	02-13 →	17-78	03-03-78
	BRUNSWICK	10-03-77	12-26-77	01-20-78	03-01 →	03-78	03-31-78
	FARLEY	11-17-77	01-23-78	02-10-78	03-13 →	17-78	04-07-78
	HATCH	11-17-77	02-13-78	03-03-78	04-03 →	07-78	04-28-78
	ST. LUCIE	01-27-78	03-06-78	03-31-78	04-24 →	28-78	05-12-78
	TURKEY POINT	01-27-78	04-03-78	04-28-78	05-22 →	26-78	06-09-78
	CRYSTAL RIVER	02-01-78	05-01-78	05-16-78	06-19 →	21-78	06-30-78

SLIDE 9

PHASE II REVIEW

TEAM	PLANT SITE	MASP DUE	MASP REVIEW BEGIN	DRAFT SPER COMPLETE	MANAGEMENT REVIEW/ SITE VISIT		MANAGEMENT REVIEW/ SPER COMPLETE
TEAM NO. 7 GAITANIS	FITZPATRICK	09-19-77	11-28-77	12-09-77	03-06	03-08-78	03-15-78
	BEAVER VALLEY	10-03-77	12-12-77	12-23-77	03-16	03-17-78	03-24-78
	INDIAN POINT 1 & 2	11-14-77	12-27-77	01-06-78	03-27	03-29-78	04-05-78
	INDIAN POINT 3	11-22-77	01-09-78	01-18-78	04-06	04-07-78	04-14-78
	MILLSTONE	12-05-77	01-19-78	01-27-78	04-17	04-19-78	04-26-78
	HADDEN NECK	12-27-77	01-30-78	02-08-78	04-27	04-28-78	05-05-78
	CALVERT CLIFFS	01-16-78	02-13-78	02-22-78	05-08	05-10-78	05-17-78
	THREE MILE ISLAND	01-30-78	02-23-78	02-03-78	05-18	05-19-78	05-26-78
TEAM NO. 8 PAGANO	SALEM	09-21-77	11-21-77	12-16-77	02-20	24-78	03-03-77
	PILGRIM	09-28-77	12-19-77	01-06-78	03-06	10-78	03-17-78
	PEACH BOTTOM	11-21-77	01-09-78	01-27-78	03-20	24-28	03-31-78
	OYSTER CREEK	11-28-77	01-30-78	02-17-78	04-03	07-78	04-14-78
OPEN	SHOREHAM						

SLIDE 10

"PROBLEM" AREAS

<u>ISSUE</u>	<u>RESOLUTION</u>
1. RESPONSE FORCE SIZE	REVIEW GUIDELINE 8
2. SCREENING OF EMPLOYEES/CONTRACTORS	ANSI 18.17
3. ESCORT RATIO	REVIEW GUIDELINE
4. CCTV	73.55 (H) (4)
5. ACCESS CONTROL TO VITAL AREAS	REVIEW GUIDELINE 11
6. PACKAGE SEARCH REQUIREMENTS	REVIEW GUIDELINE 15
7. ESCORT AND CONTROL OF VEHICLES	REVIEW GUIDELINE 5
8. NRC EMPLOYEE ACCESS	GUIDANCE ISSUED TO LICENSEES
9. REVIEW PROCEDURES	EXPEDITED REVIEW
10. FAILURE MODE OF VITAL AREA LOCKS	IE BULLETIN 77-08
11. SCHEDULE	10 CFR 73.55
12. DEFINITION OF VITAL AREAS	REVIEW GUIDELINE 17
13. RELATIONSHIP TO PART 21	UNDER REVIEW

SLIDE 11

REVIEW GUIDELINES

<u>Guideline</u>	<u>Subject</u>
1	Screening of Individuals Granted Unescorted Access to the Protected Area
2	Escorting of Unattended Visiting Vehicles
3 Rev 1	Performance of Metal Detection Devices
4	Performance of X-Ray Devices
5	Licensee Designated Vehicles
5 Rev 1	Licensee Designated Vehicles
6	Need for Access to Vital Areas
7	(to be issued at a later date)
8	Criteria for Granting Fewer than 10 Armed Responders
9	Acceptable Compensatory Measures for Intrusion Detection Hardware Outage (e.g., Zone, System) Protected Area Vital Areas
10	Compensatory Measures for the Loss of Normal Power Supply to Security Lighting
11	Vital Area Positive Access Control Definition
12	Sabotage Incident Management
13	Compensatory Measures for Vital Areas Lacking the "Two Barrier Protection"
14	Locking Systems-Assurance of Safety and Safeguards During an Emergency
15	Package Search
16	Protective Measures for CAS or SAS Using the Equivalent Information Concept
17	Definition of Vital Areas, Revision 1
18	Protected Area Control Function in Bullet-Resisting Structure

SLIDE 12

D. Knuth - KMC
2/22/78

AGENDA

1. INTRODUCTION AND GENERAL REMARKS ON PROTECTION
OF SECURITY INFORMATION
2. OBJECTIVES OF STUDY
 - . BACKGROUND INCLUDING DISCUSSION OF PREVIOUS STUDIES --
SOUTHERN NUCLEAR ENGINEERING, SANDIA, MICHELSON
 - . OVERALL GOAL OF THIS STUDY
3. METHODOLOGY OF STUDY
4. REVIEWS FOR COMPLETENESS
5. CONCLUSIONS AND RECOMMENDATIONS

SABOTAGE STUDIES

PRIOR

- . AN APPRAISAL OF THE POTENTIAL HAZARD OF INDUSTRIAL SABOTAGE IN NUCLEAR PLANTS, C. ROGERS McCULLOUGH, STANLEY TURNER, RAYMOND LYERLY, SNE-S1, JULY, 1968
- . SAFETY AND SECURITY OF NUCLEAR POWER REACTORS TO ACTS OF SABOTAGE, SANDIA LABORATORIES, SAND 75-0504, MARCH 1976
- . NUREG-0144, SUMMARY REPORT OF WORKSHOP ON SABOTAGE PROTECTION IN NUCLEAR POWER PLANT DESIGN, FEBRUARY, 1976
- . MICKELSON STUDY

ON GOING

- . SYSTEMS ANALYSIS CORP -- SECURITY FORCE COLLUSION
- . LASL EXPLOSIVES STUDY -- IDENTIFY AMOUNT OF EXPLOSIVES TO ACCOMPLISH SERIOUS DAMAGE TO CRITICAL REACTOR COMPONENTS
- . SANDIA -- INTEGRATION OF PLANT DESIGN AND DAMAGE CONTROL INTO LWR SAFEGUARDS

OBJECTIVES OF STUDY

- . ASSESS THE DEGREE OF DIFFICULTY OF CONDUCTING A SUCCESSFUL SABOTAGE LEADING TO A SUBSTANTIAL RELEASE OF RADIOACTIVITY
- . IDENTIFY AND EVALUATE MORE LIKELY SCENARIOS
- . PROVIDE MEANS FOR QUICKLY EVALUATING ANY SPECIFIC SCENARIO
- . IDENTIFY POSSIBLE IMPROVEMENTS IN PLANT SECURITY WHICH DO NOT DETRACT FROM PLANT SAFETY OR OPERABILITY

METHODOLOGY

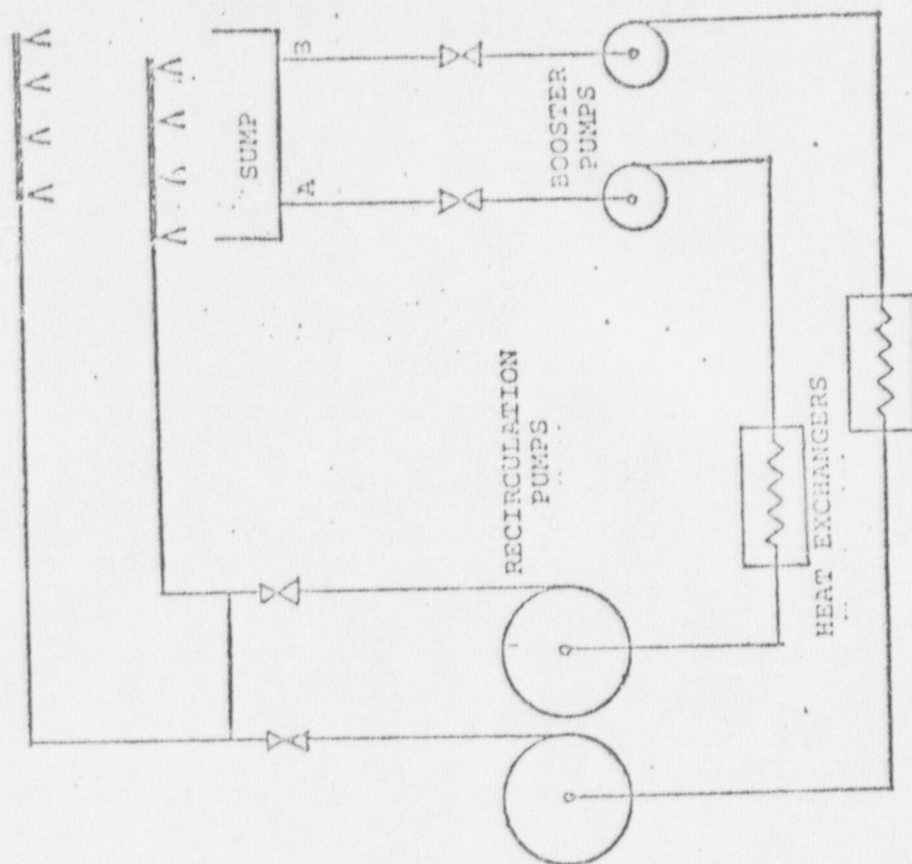
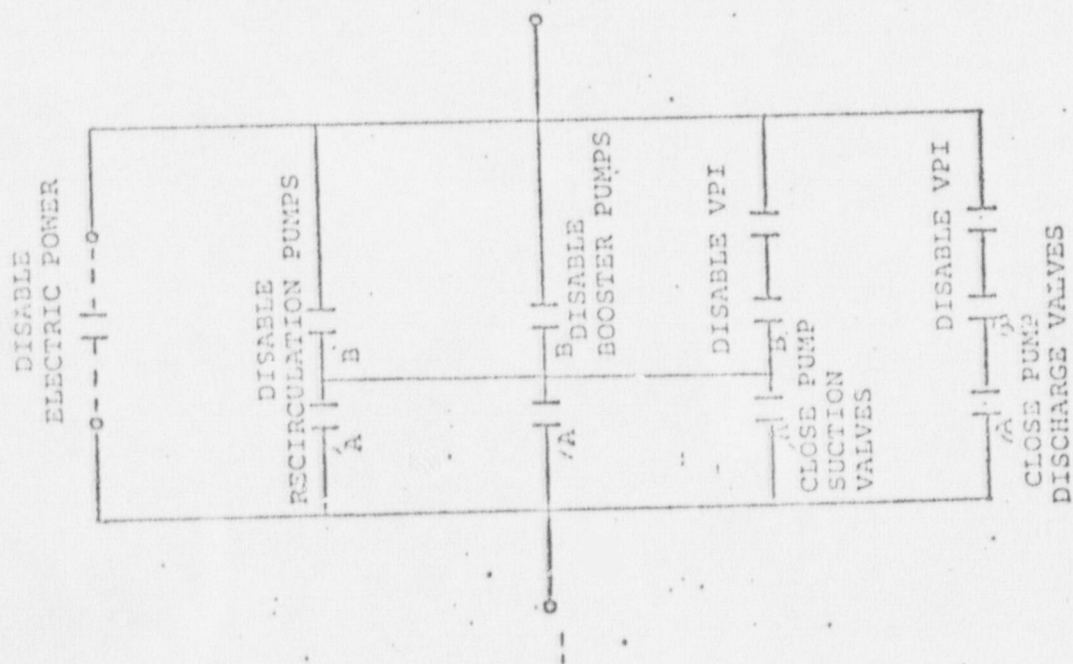
- . IDENTIFY SYSTEMS/COMPONENTS/ACTIONS POTENTIALLY INVOLVED
IN CAUSING OR MITIGATING CORE MELT -- WASH-1400
- . IDENTIFY POSSIBLE SABOTAGE TECHNIQUES
 - . LITERATURE
 - . KNOWLEDGEABLE ENGINEERS
- . USE OF WORKSHEETS TO CATALOG SYSTEMS COMPONENTS
- . DEVELOP SPECIFIC SCENARIOS USING DATA FROM WORKSHEETS
- . EVALUATE SCENARIOS
- . IDENTIFY POSSIBLE IMPROVEMENTS

KMC STUDY WORK SHEET

FUNCTION	METHODS	INDICATION	TIME TO INDICATION	LOCATION	FACTORS AFFECTING EASE OR DIFFICULTY

SLIDE 17

SPRAY POND RECIRCULATION SYSTEM



Simplified Schematic
SLIDE 18

FUNCTION	METHODS	INDICATION	TIME TO INDICATION	LOCATION	FACTORS AFFECTING EASE OR DIFFICULTY
RECIRCULATION PUMP A	DISCONNECT/SHORT POWER AT PUMP	PROBABLY NONE	EACH TESTED ONCE/WK	A PUMP LOCATED IN SUMP PIT A B PUMP IN SUMP PIT B	A SUMP PIT IS A RADIATION FIELD OF 15 R/HR A B SUMP PIT NORMALLY OPERATES AT TEMPERATURES OF 165OF DISCONNECTING 4 KV POWER OR SHORTING TERMINAL BLOCK WOULD REQUIRE AT LEAST 15 MINUTES
	DISABLE POWER RELAYS	CABINET ALARMED IF OPENED	IMMEDIATE	ELECTRICAL ROOM X-4	REMOVING FUSES, RESETTING OVERLOADS OR BLOCKING RELAY WOULD BE POSSIBLE ALTHOUGH WOULD PROVIDE HAZARD OF SHOCK FROM 4 KV SOURCE
	REMOVE COOLING	NONE	NONE	A & B SUMP PIT	NO EFFECT ON OPERATION
	DRAIN/CONTAMINATE OIL	PERHAPS NONE IF DRAINED LOW LEVEL ALARM -- NONE WITH CONTAMINATION	ONCE PER SHIFT LOG FUNCTION	A & B SUMP PIT	WOULD BE MAJOR MAINTENANCE OPERATION TO DRAIN -- POSSIBLE TO ADD CONTAMINATE
	JAM DRIVE TRAIN	PERHAPS NONE	WEEKLY TEST PERHAPS ON SHIFT WALK AROUND	A & B SUMP PIT	DIFFICULT ACCESS ABILITY & HAZARDOUS

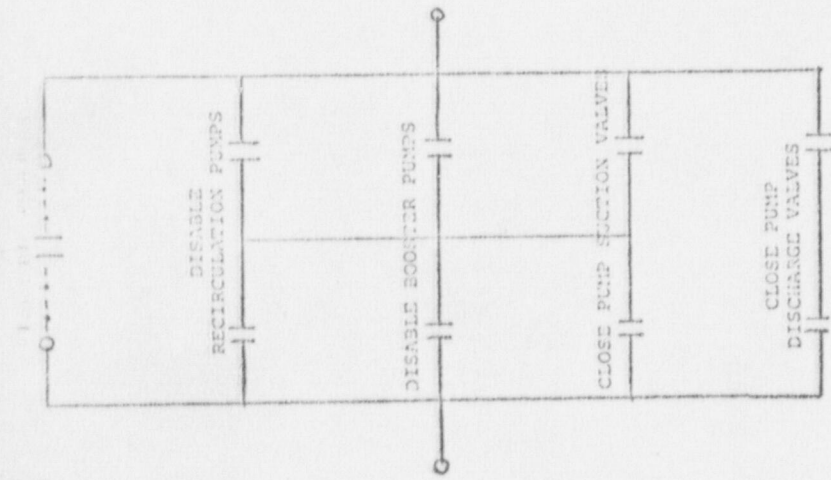
SLIDE 19

FUNCTION	METHODS	INDICATION	TIME TO INDICATION	LOCATION	FACTORS AFFECTING EASE OR DIFFICULTY
VALVES	DISCONNECT OPERATOR	PROBABLY NONE	TWICE PER WEEK TEST	TURBINE AUXILIARY ROOM 6A	430 V LIMITORQUE -- LIFTING LEADS PROBABLY NOT DETECTED OPERATOR CAN BE MANUALLY OPENED
	JAM CLOSED	VALVE NORMALLY OPEN -- CLOSING WOULD GIVE INDICATION	IMMEDIATE	TURBINE AUXILIARY ROOM 6A	WOULD REQUIRE AT LEAST 10 MINUTES TO FULLY CLOSE DUE TO SIZE AND HENCE DIFFICULT FOR ONE PERSON TO CLOSE
	DISCONNECT/SHORT ELECTRIC POWER	NONE	NONE	TURBINE AUXILIARY ROOM 6A	VALVE IS NORMALLY OPEN WIRING TO CLOSE UPON DEMAND FOR OPEN SIGNAL IS POSSIBLE WITH ACCESS TO PRINTS

SLIDE 20

FUNCTION	METHODS	INDICATION	TIME TO INDICATION	LOCATION	FACTORS AFFECTING EASE OR DIFFICULTY
PIPES	SEVER	PROBABLY NONE	WEEKLY TEST VISUAL SHIFT INSPEC-TION	1) SUMP PIT A&B 2) TUNNEL 5C 3) TURBINE AUXILIARY ROOM 6A 4) TUNNEL SPACE 8C	PIPE IS 14" OD WITH 1/2" WALL THICKNESS -- WOULD REQUIRE CUTTING TORCH OR EXPLOSIVES
	BLOCK	PROBABLY NONE	WEEKLY TEST	1) SUMP PIT A&B 2) TUNNEL 5C 3) TURBINE AUXILIARY ROOM 6A 4) TUNNEL SPACE 8C	WOULD REQUIRE MAJOR MAINTENANCE INCLUDING CUTTING TORCH TO INSTALL BLIND FLANGE
	DISCONNECT DETECTOR	NONE	MONTHLY CALIBRATION TEST	PRESSURE CHANNEL 2 IN CONTROL ROOM	WOULD LOSE INDICATED SIGNAL -- MAY ESCAPE DETECTION
	DISABLE RELAYS	NONE	WEEKLY TEST	TURBINE ELECTRICAL ROOM 1A	WOULD REQUIRE 3 MINUTES PER CHANNEL TO BLOCK RELAYS AND REINSTALL COVER

SLIDE 21



NONE

SUMP PIT A & SUMP
PIT B

A SUMP PIT IS A RADIATION FIELD OF 15 R/HR --
A B SUMP PIT NORMALLY OPERATES AT TEMPERATURES
OF 165OF -- DISCONNECTING & RV POWER OR
SHORTING TERMINAL BLOCK WOULD REQUIRE AT
LEAST 15 MINUTES

ELECTRICAL ROOM X-4

REMOVAL OF FUSES OR RESET OVERLOADS POSSIBLE

NONE

SPRAY POND SUMP ROOM

ROOM LOCKED AND ALARMED -- MONITORED BY CCTV

NONE

SPRAY POND SUMP ROOM

ROOM LOCKED AND ALARMED -- MONITORED BY CCTV

VALVE NORMALLY
OPEN -- CLOSING
WOULD GIVE
INDICATION

TURBINE AUXILIARY ROOM

480 V LIMITORQUE -- LIFTING LEADS PROBABLY
NOT DETECTED; HOWEVER, VALVE IS NORMALLY
OPEN -- OPERATOR CAN BE MANUALLY OPENED

SLIDE 22

REVIEW FOR COMPLETENESS

- . INFINITE NUMBER OF POTENTIAL SCENARIOS POSSIBLE -- DESIRE ASSURANCE MAJOR AVENUES IDENTIFIED
- . FOR HIGH CONSEQUENCE SABOTAGE NEED SIGNIFICANT FUEL MEETING ALONG WITH RELEASE PATH TO ENVIRONMENT (WASH-1400 EVENT TREES)
 - . TRANSIENT OVERPOWER
 - . LOCA
 - . LOSS OF ALL DECAY HEAT REMOVAL
- . OTHER EVENTS OF LESSER SIGNIFICANCE
 - . DAMAGE GASEOUS RADWASTE
 - . DAMAGE LIQUID RADWASTE
 - . DAMAGE SPENT FUEL (STORAGE POOL OR IN REACTOR DURING SHUTDOWN)
- . ADMINISTRATIVE PROCESS
 - . REVIEW WITH PLANT OWNERS
 - . REVIEW WITH SELECTED UTILITY PARTICIPANTS (REPRESENTATIVES OF THREE UTILITIES)
 - . REVIEW OF CONSULTANT (RASMUSSEN)
 - . REVIEW OF ENTIRE GROUP OF REPRESENTATIVES OF 24 UTILITIES
 - . DISCUSS WITH SANDIA LABORATORY PERSONNEL

SLIDE 23

CONCLUSIONS

- METHODOLOGY VIABLE IN PROVIDING PLANT OWNERS WITH DISCIPLINED ENGINEERING APPROACH FOR EVALUATING SABOTAGE POTENTIAL
- SABOTAGE ATTEMPT OF OPERATING PLANT LEADING TO SUBSTANTIAL RELEASE IS VERY DIFFICULT AND UNCERTAIN UNDERTAKING
- IF REQUIRED ENGINEERING MODIFICATIONS CAN BE MADE TO RENDER SCENARIOS SUBSTANTIALLY MORE DIFFICULT
- GENERAL REQUIREMENT OF TWO-MAN RULE OR ADDITIONAL COMPARTMENTALIZATION NOT NECESSARY OR APPROPRIATE
- PROBABILITY OF SINGLE INSIDE SABOTEUR ESCAPING DETECTION, INJURY OR DEATH IS LOW
- EVEN FOR ACTS IDENTIFIED AS SUCCESSFUL, CONSIDERABLE UNCERTAINTY EXISTS TO DEGREE OF SUCCESS

SLIDE 24

PASEDAG NRC
2/22/78

VITAL EQUIPMENT DEFINITION

"VITAL EQUIPMENT" MEANS ANY EQUIPMENT, SYSTEM, DEVICE, OR MATERIAL, THE FAILURE DESTRUCTION OR RELEASE OF WHICH COULD DIRECTLY OR INDIRECTLY ENDANGER THE PUBLIC HEALTH AND SAFETY BY EXPOSURE TO RADIATION.

EQUIPMENT OR SYSTEMS WHICH WOULD BE REQUIRED TO FUNCTION TO PROTECT PUBLIC HEALTH AND SAFETY FOLLOWING SUCH FAILURE, DESTRUCTION OR RELEASE ARE ALSO CONSIDERED TO BE VITAL.

10 CFR 73.2 (1)

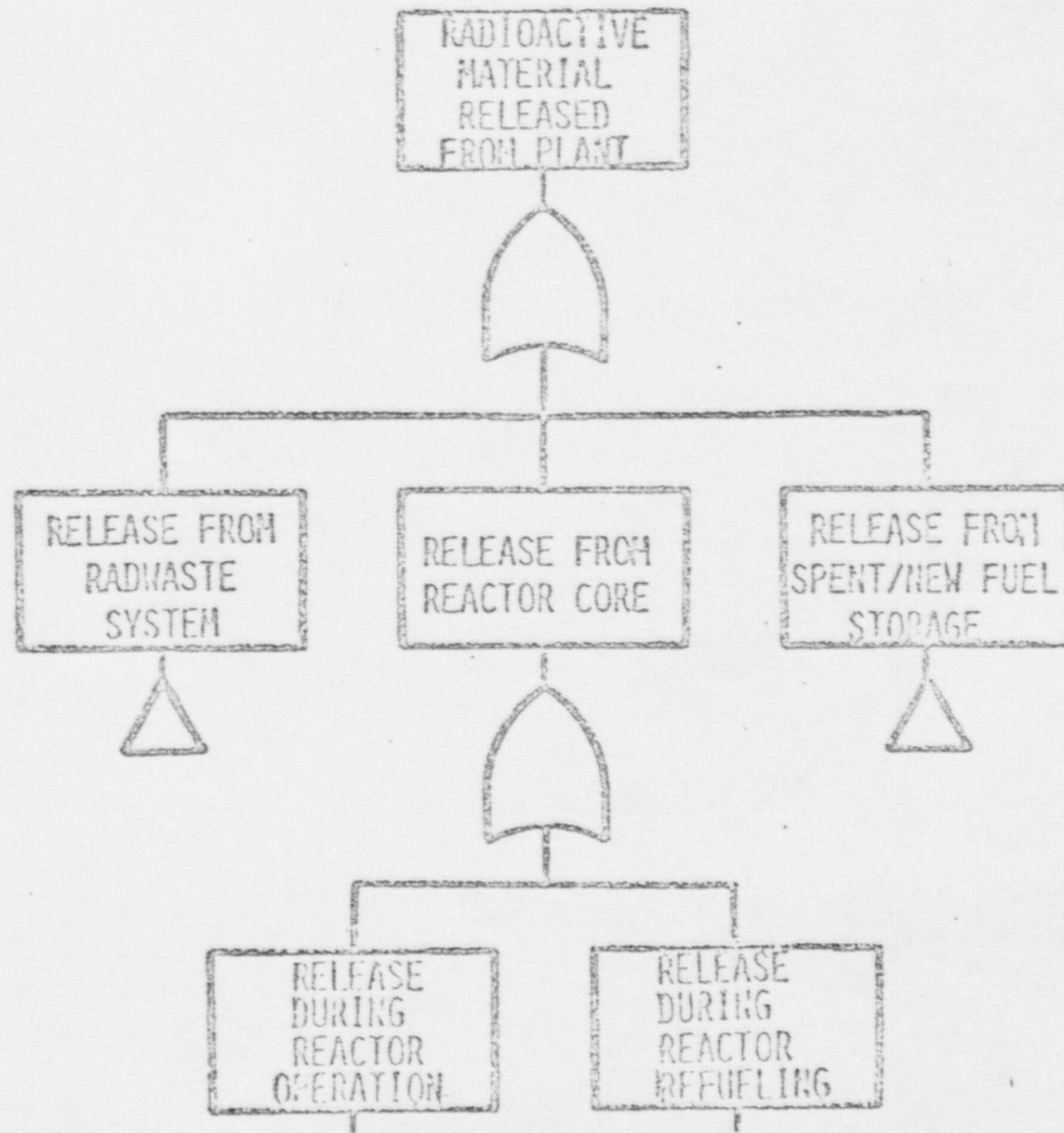
TYPE I VITAL AREAS

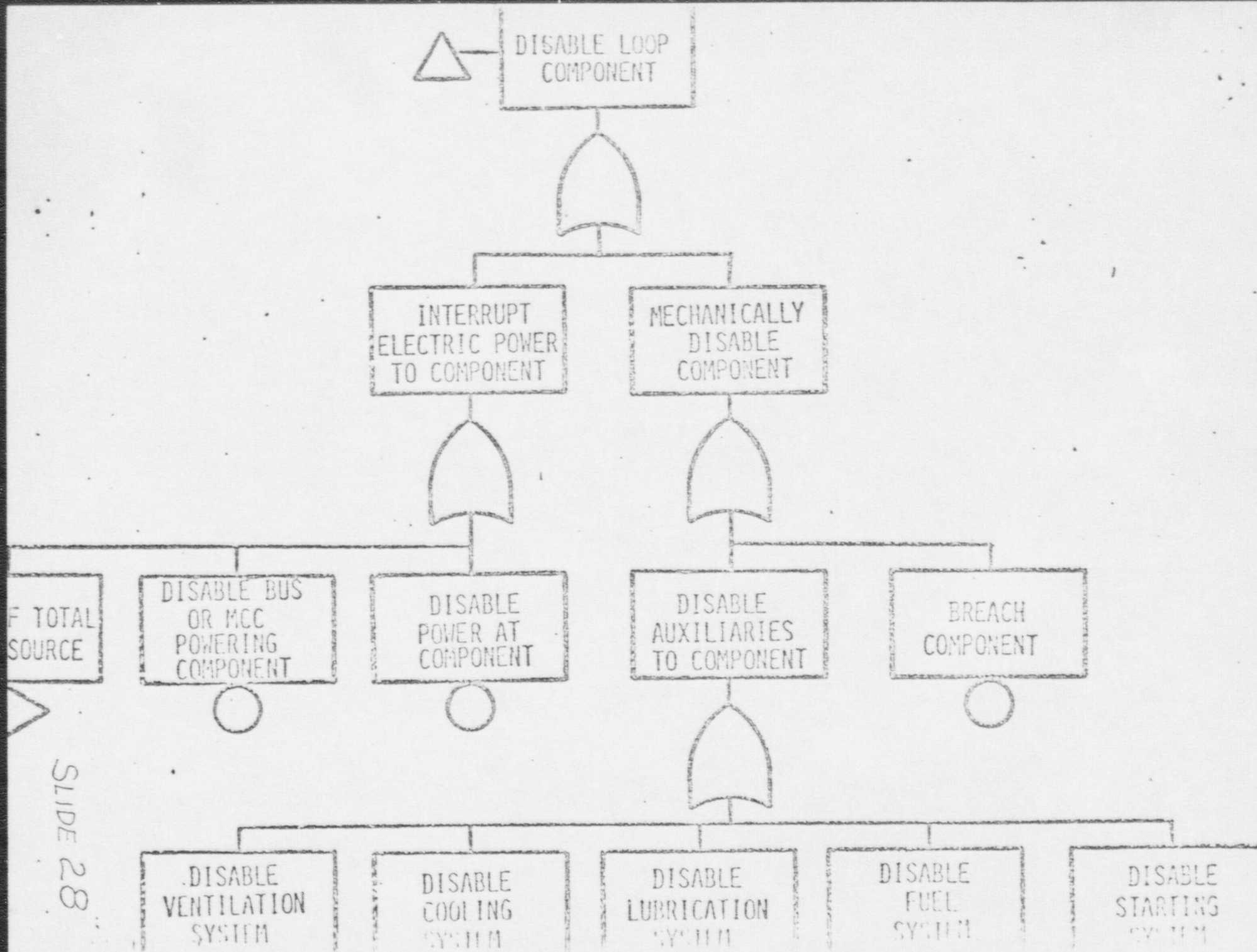
THOSE VITAL AREAS WHEREIN ALL ON-SITE ACTS REQUIRED FOR
SUCCESSFUL SABOTAGE CAN BE ACCOMPLISHED WITHIN THIS AREA.

BASIC ASSUMPTIONS:

- ① NO CONCURRENCE OF VIOLEN NATURAL PHENOMENIA OR RANDOM
EVENTS.
- ② LOSS OF OFF-SITE POWER AS A RESULT OF CO-ORDINATED OFF-
SITE SABOTAGE IS ASSUMED.

GENERIC FAULT TREE FOR PWR SABOTAGE





PWR FAULT TREE ANALYSIS

2076

SCENARIOS

170

DIFFERENT EVENTS

8

TYPE 1 VITAL AREAS

SLIDE 29

CATEGORY A GENERIC ISSUE:

TECHNICAL ACTIVITY NO. A-29

"NUCLEAR POWER PLANT DESIGN FOR THE REDUCTION OF VULNERABILITY
TO INDUSTRIAL SABOTAGE"

SLIDE 30

TECHNICAL ACTIVITY A-29

APPROACH:

1. INTER-OFFICE WORKING GROUP
2. CONFIRMATORY RESEARCH

EXPECTED RESULTS:

- RECOMMEND AMENDED REG'S - IF APPROPRIATE
- PUBLISH REG. GUIDES - IF APPROPRIATE
- MODIFY SRP

SCHEDULED COMPLETION:

PRELIMINARY RESULTS - 1/79
FINAL RESULTS - 10/79

SLIDE 31

SAFEGUARDS EFFECTIVENESS EVALUATION PROJECTS

PROJECT-PRODUCT	ANALYTICAL CAPABILITY						DUE DATE
	IDENTIFICATION OF INITIATING EVENTS	VITAL AREA IDENTIFICATION	IDENTIFICATION OF BEST PATHS	DECEIT DETECTION PROBABILITY	PROBABILITY OF ENCOUNTER	ENGAGEMENT PROBABILITY	
CISS - CONCEPT	X	X					delivered
SANDIA PHYSICAL PRO.							
EASI					X	X	delivered
FESEM						X	delivered
BWR FT CODE	X	X					delivered
PWR FT CODE	X	X					MAR 78
ISEM			X				APR 78
PATH FINDER			X				JUN 78
SAFE			X		X	X	SEP 78
FSNM I					X	X	DEC 78
LAWRENCE LIVERMORE							
DIGRAPH TECHNIQUE AND FT ANALYSIS							
HARD CAPABILITY				X			AUG 78
COMPUTERIZED				X			JAN 79

SLIDE 32

REACTOR DESIGN STUDY

MILESTONES

PROGRAM PLAN	JUN 78
BASLINE PLANT SELECTION AND CHARACTERIZATION	SEP 78
PLANT DESIGN OPTIONS	OCT 78
DAMAGE CONTROL OPTIONS	NOV 78
ALTERNATE PLANT CONFIGURATIONS	DEC 78
PHYSICAL PROTECTION SYSTEMS	JAN 79
PRELIMINARY REFERENCE DESIGNS	FEB 79
EVALUATION OF PRELIMINARY REFERENCE DESIGNS	JUN 79
PHASE I REPORT (NRC DECISION POINT)	OCT 79
FINAL REFERENCE DESIGN CRITERIA	JUN 80
VALUE-IMPACT ASSESSMENT	OCT 80
FINAL REPORT	JAN 81

SLIDE 33