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

July 3, 1980

MEMORANDUM FOR: William J. Dircks
Acting Executive Director for Operations

FROM: Howard K. Shapar
Executive Legal Director

SUBJECT: PUBLIC LAW 96-295, THE NRC'S FY 1980 AUTHORIZATION ACT

On June 30, 1980, the President signed Enrolled Bill S.562, the NRC's FY 1980 Authorization Act. In addition to the authorization and financial matters which are traditionally the subject of authorization legislation, this particular Act, as you know, makes a number of substantive changes to the laws under which the NRC operates and includes numerous sections which give substantive directions to the NRC in specific areas. In view of their importance, this memorandum gives an overview of their most salient features. The intent here is to be as informative as possible without going into the detailed legislative analysis which, of course, is necessary if a question is raised on a specific issue of importance. Should the need arise for detailed legal guidance on specific questions which may arise under this legislation, we will provide the guidance.

As a general matter at the outset, it should be noted that this legislation represents the Congress's first change in the substantive laws applicable to this agency subsequent to March 28, 1979. These changes are accompanied by a legislative history which is considerably more extensive than is normally produced for authorization legislation. For purposes of the overview which follows, we have attempted to include guidance from this history which sheds significant light on changes in the substantive law and on the substantive directions to the NRC, but to do so without getting overly involved in the details.

In connection with the many statutory directions for reports to the Congress in P.L. 96-295, the following statement in the Conference Report (at p. 38) may be of particular interest to you at the outset:

"To the extent that ongoing NRC studies can be used in response to reporting requirements set forth in the conference agreement, [i.e. P.L. 96-295] the conferees direct the Commission to eliminate needless duplication and expense by using as many such ongoing studies as possible."

The starting point of this overview is with Title II of Public Law 96-295 which adds three new sections to the Atomic Energy Act of 1954, as amended, and amends five of the existing sections in that Act.

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I. Title II - Amendments to the Atomic Energy Act of 1954

A. New Sections

1. Section 235: Protection of Nuclear Inspectors.

This section makes it a federal crime to kill, assault, intimidate or otherwise interfere with "any person who performs any inspections" which are related to any activity or facility licensed by the Commission and which are carried out to satisfy requirements under applicable Federal law.

2. Section 236: Sabotage of Nuclear Facilities or Fuel.

This section makes it a federal crime, with criminal penalties up to \$10,000 or imprisonment for not more than ten years, for any person who intentionally and willfully destroys or causes physical damages, or attempts to do so, to any facility licensed under the Atomic Energy Act, any nuclear fuel for such a facility, or any spent fuel from such a facility regardless of the location of the fuel or the spent fuel.

The section covers all licensed nuclear waste storage facilities, including the storage tanks at West Valley, N.Y., and the six commercial low-level waste burial sites. (Conf. Report at 32).

This section is not intended to support a criminal prosecution unless there occurred actual physical damage to, or destruction of, part of the facility, or unless it could be shown the person willfully and intentionally attempted to cause such damage or destruction. During the debate on the conference report in the Senate, Senator Baker expressed concern that the section did not address actions with intent to cause substantial economic harm to a utility (Cong. Rec., at S.7085, June 16, 1980). Presumably this will be considered by the cognizant committees at a later date.

3. Section 147: Safeguards Information.

In substance, this new section is responsive to the legislative proposal which the Commission submitted to the Congress several years ago. Most of the changes in the legislation as enacted were for the purpose of assuring that the authority only be used to apply the minimum restrictions on the disclosure of safeguards information as necessary. Thus, the Commission is authorized to restrict the disclosure of safeguards information only if its unauthorized disclosure "could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage" of certain nuclear material and facilities.

In keeping with the clear Congressional objective of minimum restrictions on disclosure, the new section requires NRC, upon issuance of any proposed regulation or order under this section, to report to Congress on how the

proposal satisfies the standards in the section for withholding safeguards information. A quarterly report to the Congress is required on how the Commission, during the period of the report, has applied its regulations to withhold safeguards information. These quarterly reports need only identify types of categories of safeguards information withheld under the regulations issued under Section 147. The intent is that these reports resemble the Commission's "Preliminary notification" reports of abnormal occurrences at nuclear power plants. (Conf. Rep. at 36).

The section also expressly exempts from its coverage information pertaining to the routes and quantities of shipments of source material, byproduct material, high-level nuclear waste, or irradiated nuclear reactor fuel. In this regard, the Conference Report states (at p. 35):

"The conferees intend that information concerning shipments of special nuclear material, other than shipments of high-level nuclear waste or spent fuel which may arguably be so classified are fully subject to the Commission's authority conferred by subsection (a) of the conference substitute [i.e. subsection 147(a)] to prohibit unauthorized disclosure. The conferees do not intend, however, to express an opinion on whether high level nuclear waste or spent fuel constitute special nuclear material."

This language was not in either the substitute bill (H.R. 5297) which was debated in the House, or in the original bills (H.R. 2608 and S.562) which were reported by the respective Committees. The language in section 147 in the substitute bill (H.R. 5297) was identical in substance to the Commission's legislative proposal. Among other things, the section in that bill would have protected "safeguards information which identifies a licensee's or applicant's detailed *** security measures *** for the physical protection of *** [nuclear] material, by whomever possessed, whether in transit or at fixed sites ***." During the debate in the House on the substitute bill, Congressman Moffett asked the bill's manager, Congressman Udall, "whether this language was intended to include, first, the specific routes and times of any specific shipment of nuclear wastes regarding safeguards?" (Cong. Record at H11497-H11498, December 4, 1979). This question resulted in the following colloquy (Id. at H11498):

Mr. Udall: *** The answer is clearly yes.

Mr. Moffett: Second, the detailed specific security measures, in other words, the methods used in deciding the specific routes for any specific shipment of nuclear waste requiring safeguards?

Mr. Udall: The gentleman is also precisely correct on this point.

Mr. Moffett: *** as I understand the intent of the provision, however, it is not intended to include such general information as

the frequency, quantities, and forms of nuclear wastes regularly in transit through a particular jurisdiction and the general routes used - which in the case of spent fuels, for example, are approved by the NRC - by nuclear waste shipments?

Mr. Udall: The answer to that question is also yes.

There are obvious ambiguities which surround the express language added to Public Law 96-295 in conference to the effect that nothing therein "shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, byproduct material, high level nuclear waste, or irradiated nuclear fuel." Until further guidance is available, it would not seem to be unreasonable to consider this language as a statutory implementation of the Moffett-Udall colloquy. In addition, the language only applies to authorization under section 147 and does not affect any other authority available to the Commission to withhold such information.

B. Amendments to Existing Sections of the Atomic Energy Act

1. License Condition Requiring Notification

Public Law 96-295 adds a new subsection to section 103 "Commercial Licenses" which provides that each utilization facility licensed thereunder or under section 104b. (research and development facilities which require a license) shall require as a condition that "in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately notify the Commission."

The new subsection also directs the Commission to "promptly amend" each such license "which is in effect on the date of enactment of this subsection" [June 30, 1980] "to include the provisions required" by the new subsection. Violation of the condition prescribed by the subsection may, in the Commission's discretion, constitute grounds for license revocation.

The Conference Report (at p. 30) provides the following guidance on this matter:

"The conferees recognize the need for predictability in determining these situations for which this provision requires notification. The conferees therefore intend that the Commission should establish requirements as soon as possible providing specific guidelines for identification of an accident that could result in a release of radioactivity in excess of allowable limits. The conferees intend that the license condition established by this section will take effect when these guidelines have been established by the Commission."

Thus, on this matter: The Commission must "promptly" amend all section 103 and 104(b) utilization licenses which are in effect on June 30, 1980 to include the condition required by the new subsection; must establish specific guidelines "as soon as possible" on situations which require notification under the condition; and the license condition will take effect when the guidelines have been established by the Commission.

2. Extension of Criminal Penalties

Section 223 of the Act, which provides criminal penalties for certain violations of any of its provisions, is amended to establish criminal penalties applicable to certain individuals of a firm constructing or supplying the components of any utilization facility licensed under section 103 or 104(b). The term "supply" includes fabrication of components. (Conf. Rep. at p. 30). The individuals are any individual director, officer, or employee of such firms. Under the amended section, it would be a criminal offense if any of these individuals "by act or omission, in connection with such construction or supply, knowingly and willfully violates or causes to be violated, any section of this Act [i.e., the Atomic Energy Act of 1954, as amended], any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a facility...."

Basic component is defined in the amendment generally along the lines of the definition in 10 CFR Part 21. Part 21 implements section 206 of the Energy Reorganization Act of 1974, which has an approach similar to the amendment to section 223, but section 206 does not provide for criminal penalties and is not as limited in scope as is the new language in section 223. A significant difference in the definition of basic component in the statute and in Part 21 is that the statute does not adopt the reference to Part 100 for potential offsite exposures. Instead, the statute directs the Commission to establish a threshold level of accidental release.

The conferees (at pp. 30-31) noted that although the regulations in Part 21 specify such a level [by reference to Part 100], they desired "the Commission to specifically consider the advisability in this context of revising that level to one that includes any accidental release in excess of allowable limits established by the Commission for normal operations."

The conferees noted (at p. 31) that they had agreed to direct the Comptroller General to study the need for extending the authority in the amended section 223 to the operation of a commercial nuclear power plant. This study is to examine allegations about leak rate testing and reporting prior to the TMI-2 accident, and about Arkansas Nuclear Unit One.

3. Temporary Suspension of State Agreements In An Emergency

Subsection 274j. of the Act is amended by adding additional authority under which the Commission may temporarily suspend all or part of its agreement

with a State without notice or hearing. This authority may be exercised by the Commission upon its own motion or at the request of the Governor and after notice to the Governor. The exercise of this authority requires a determination by the Commission that an emergency situation exists, and the temporary suspension shall remain in effect only for such time as the emergency exists and only to the extent necessary to contain or eliminate the danger.

The emergency situation must exist with respect to any material covered by the agreement which creates a danger requiring immediate action to protect the health and safety of persons either within or without the State. The Commission must determine that the State has failed to take steps to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

The conferees clearly intend that the NRC will invoke this authority "only as a last resort" and "full state authority" will resume under its agreement after the emergency has ended (Conf. Rep. at 33). Presumably the determinations called for need not be made, as a matter of statutory requirement, by the Commissioners themselves since the conference report uses the term "NRC" in its discussions of the determinations which have to be made. (Ibid.).

The conferees noted that under existing law [prior to this amendment] the NRC "cannot act to control the emergency" in an agreement state until after it gives notice and holds a hearing. (Conf. Rep. at p. 33). Then the conferees asserted (Ibid.):

"Moreover, [under existing law] the NRC cannot limit the termination or suspension to a particular licensee but rather must apply the termination or suspension to an entire category of nuclear material covered by the agreement. The conferees recognized that in those rare instances in which an emergency requires NRC to exercise authority, the current statutory mechanism is too cumbersome and slow to protect public health and safety."

4. Civil Penalties

Section 234 is amended by raising the maximum civil penalty per violation from \$5,000 to \$100,000 and by eliminating the "cap" which now limits the total penalties payable in a 30-day period to \$125,000.

It should be noted that these are the only respects in which section 234 is changed. Its existing provisions in subsection 234c. regarding the role of the Attorney General of the United States were not amended.

* [The conference report (at p. 34), and the debates on it in each House (Cong. Rec. H4726, June 10, 1980 and S.7084, June 16, 1980), state that the increased civil penalty limits in section 234 will also apply to civil penalties imposed under section 206 of the Energy Reorganization Act of 1974.

5. Safeguards Information in Agency Proceedings

Section 181 is amended to add "safeguards information protected from disclosure under the authority of section 147," to this section. Section 181 directs the Commission to provide by regulation for parallel procedures which will effectively safeguard and prevent the disclosure to unauthorized persons of certain information in agency proceedings. Prior to this amendment, the authority under section 181 was limited to the protection of Restricted Data or defense information.

This amendment was requested in the Commission's legislative proposal on the protection of safeguards information. This expanded authority in section 181 means that the regulations in 10 CFR Subpart I should be amended so that the parallel procedures provided for there will also apply to the protected safeguards information under section 147.

II. Title I

Although the heading of Title I of Public Law 96-295 is "Authorization of Appropriations for Fiscal Year 1980", it contains important substantive directions to the NRC, and in some instances these provisions could ultimately impose limitations on the exercise of existing licensing authority. As examples, there are sections in Title I which deal with matters such as remote siting, state emergency response plans, NRC emergency response plan, and a systematic safety evaluation plan, which we will now discuss.

1. Section 108: Demographic Requirements For the Siting Facilities

Section 108 of P. L. 96-295 is a rather detailed statutory direction to the NRC to develop and promulgate regulations establishing demographic requirements for the siting of utilization facilities. This direction also says that the regulations shall be promulgated "after notice and opportunity for hearing in accordance with section 553 of title 5 of the United States Code." This reference means that the regulations "shall be" promulgated under informal rulemaking procedures of the Administrative Procedures Act.]

The statute gives additional specific directions:

- The regulations "shall specify specific demographic criteria for facility siting, including maximum population density and population distribution for zones surrounding the facility without regard to any design engineering, or other differences among such facilities."
- The Conference Report (at pp. 24-25) expands on the purpose of this directive and its consistency with and responsiveness to the NRC Siting Policy Task Force Report (NUREG-0625) as follows: "The regulations must

establish such zones independent of considerations about plant design, engineering, or other differences among facilities. The NRC should develop these demographic standards, however, so as not to preclude further siting of nuclear reactors in any region of the United States, consistent with the recommendations of the NRC Siting Policy Task Force. ***

- . The conference agreement explicitly breaks the link between the plant design and allowable population density and population distribution within zones around a reactor.... the conference agreement is consistent with the goal of NRC's Siting Policy Task Force 'to strengthen siting as a factor in defense in depth by establishing requirements for site approval that are independent of plant design consideration.' ***
- . The conference agreement also incorporates the twin concepts of 'population density' and 'population distribution' as key factors in the new demographic criteria to be established for zones around reactor sites. This provides a more direct measurement of where people live relative to the nuclear plant than does a minimum distance to the nearest boundary of a densely populated political jurisdiction (i.e. city or town line).
- . The conference agreement also responds to the NRC ... Task Force finding that: "The population center distance as presently established does not provide the protection originally intended against large accidents (Class 9). This has occurred because the credit given for engineering design has permitted a reduction in the population center distance and has tended to reduce the importance of siting as a factor in defense in depth...."
- . The regulations "shall take into account the feasibility of all actions outside the facility which may be necessary to protect public health and safety in the event of any accidental release of radioactive material from the facility which may endanger public health and safety." For this purpose, the term "accidental release" includes, but is not limited to, each potential accidental release of radioactive material which is required by the Commission to be taken into account for purposes of facility design.
- . This language, the conferees state (Conf. Rep. at 25), "ties together the remote siting regulations with the policy objective of upgrading emergency preparedness and planning around reactors. The conference agreement requires the new regulations to take into account the feasibility of all emergency

actions (including evacuation) outside the facility which may be necessary in the event of an accidental release of radioactive material from the plant, including accidental releases of radioactive material resulting from a non-design basis accident."

Subject to an exception, the section preserves any State requirement relating to land use or respecting the siting of any utilization facility. The exception is that "no State or local land use or facility siting requirement relating to the same aspect of facility siting established pursuant to this section shall have any force and effect unless such State or local requirement is identical to, or more stringent than, the requirement" published under this section. (emphasis supplied).

The purpose of this provision is to make clear that the conferees do not contemplate Federal preemption of State and local authority to control land use. (Conf. Rep. at p. 25).

The section also directs the Commission to provide information and recommendations to State and local land use planning authorities having jurisdiction over the zones established under the siting regulations as well as over areas beyond these zones which may be affected by a radiological emergency. This information shall be designed to assist State and local authorities in making land use decisions which may affect emergency planning in relation to utilization facilities.

In commenting on this part of the section, the Conference Report (at p. 25) notes that NRC has the responsibility to notify State and local jurisdictions of the remote siting criteria that were satisfied at the time a construction permit was issued. The conferees "clearly intend", however, that NRC has "no direct authority to impose land use decisions on State and local jurisdictions." The Conference Report (*Ibid.*) also stresses that the authority in this part of the section "does not alter the Commission's existing authority to assure protection of public health and safety in the event of offsite developments subsequent to the issuance of an operating license."

The section as enacted does not contain any statutory deadline either for the initiation or the completion of the rulemaking on siting regulations. There is a "grandfather" provision for applications for construction permits filed on or before October 1, 1979. The statute directs that the regulations shall provide that "no construction permit may be issued for a utilization facility to which this section applies [applications filed after October 1, 1979] after the date of their promulgation unless the facility complies with the requirements set forth in the regulations ***."

With regard to timing, the Conference Report (at p. 24), states that the conferees "intend that the NRC substantially complete the work required for a final determination before the fiscal year [1980] expires, and that the NRC publish for public comment, and subsequently promulgate, new siting regulations as soon as possible."

From the foregoing, it is obvious that there is now statutory law which provides directions to the Commission on the course to be taken in revising siting regulations. To this extent, at least some of the flexibility which the NRC would have had in dealing with corresponding and consistent recommendations of its Siting Policy Task Force no longer exists because of these statutory directions.

2. Section 109: State Emergency Response Plans

This section specifies certain determinations which the Commission must make prior to the issuance of an operating license with regard to a State or local emergency preparedness plan. First, in consultation with the Director of the Federal Emergency Management Agency, the Commission may determine that for the particular facility involved the plan provides for responding to accidents and complies with the Commission's guidelines. If that determination cannot be made, then prior to issuing the operating license the Commission must determine that there exists "a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned."

The Conference Report (at p. 27) says that these requirements apply to the issuance of "an operating license for a new utilization facility." The flexibility provided for in the statutes is explained in the statute as a means to avoid penalizing an applicant for an operating license if a State or locality does not submit an emergency response plan to the NRC for review, or if the submitted plan does not satisfy all the guidelines or rules. This subject was debated extensively during the consideration of the original bills in each House, and the statute enacted provides flexibility to the NRC in this area. There is no statutory provision for automatic denial of an operating license, or for the shutdown of an operating facility, if State and local plans are not in compliance with the NRC's guidelines.

The section calls for the new regulations for emergency response plans and the regulations are to include a mechanism "to encourage and assist States to comply as expeditiously as practicable" with the standards in the regulations for State radiological emergency response plans. The section does not specify minimum requirements for the new rules but leaves "the specific requirements to NRC discretion" (Conf. Rep. at 27). Nevertheless, the Conference Report states (Ibid.):

"...the conferees expect the NRC to consider the designation of planning zones around each facility based on such factors as probable release patterns from possible accident sequences, reactor size, and demographic and land use patterns; the capability to quickly and safely implement protective measures such as evacuation and sheltering; initial and periodic testing of plan feasibility in actual drills not requiring evacuation; vesting of lead responsibility for the development and revision of the plan in a single agency, with participation of facility licensees,

local governments, and appropriate state agencies; delineation of respective organizational roles in implementation of the plan; and identification of procedures for expeditious and reliable notification and communication."

The section provides for NRC review of all existing state plans or other preparations for responding to an emergency and a report of its assessment of the adequacy of such plans and preparations "to the appropriate committees of the Congress within 6 months of the date of the enactment of this Act." If states do not have adequate plans and preparations, the NRC is to notify the Governor and other appropriate authorities in each such state of the respects in which there is not conformance to the NRC guidelines.

A report to the Congress [other than the one referred to above] on the results of the NRC's actions in this area [i.e. review and assessment of the adequacy of all plans and other preparations] and on its recommendations on any additional Federal statutory authority which the Commission "deems necessary to provide that adequate plans and preparations for such radiological emergencies are in effect for each State" in which there is located a utilization facility or which construction of such a facility has been commenced and by each State which may be affected (as determined by the Commission) by any such emergency.

In carrying out its review and assessment and submitting its report to the Congress, the section directs the Commission to include for each utilization facility and each site for which a construction permit has been issued the following:

- A review and assessment of the emergency response capability of State and local authorities and the owner or operator (or proposed owner or operator) of the facility.
- The review and assessment shall include a determination by the Commission of the maximum zone in the vicinity of each facility for which evacuation of individuals is feasible at various different times corresponding to the representative warning times for various different types of accidents.

Section 109 mentions the Federal Emergency Management Agency (FEMA) in three instances. The statute requires the NRC's determination that - there exists a State or local emergency preparedness plan which provides for responding to accidents at the facility involved and as it applies to that facility, it complies with the Commission's guidelines for such plans - shall be made "only in consultation with the Director of the Federal Emergency Management Agency." The Commission's standards for State radiological emergency response plans must be developed "in consultation with the Director of [FEMA], and other appropriate agencies which provide for the response to a radiological emergency involving any utilization facility." Any determination by the Commission that there "exists a State or local radiological emergency response

plan which provides for responding ... at the facility ... and which complies with the Commission's standards for such plans..." "may be made only in consultation with the Director of [FEMA] and other appropriate agencies."

The Conference Report had the following things to say about the FEMA/NRC relationships (at pp. 26-27):

- . The compromise [legislation] recognized FEMA's potential capability to coordinate off-site response to a radiological emergency.
- . The conferees declined, however, to delineate a more specific statutory role for FEMA until Congress considers legislative proposals that may be submitted in the near future.
- . The compromise reflects careful consideration of the role FEMA should play in the promulgation of new rules for, and the assessment of the adequacy of, state and local emergency plans.
- . The conferees also recognized the present agreements between NRC and FEMA regarding responsibility for developing requirements for state and local emergency plans and for assessing compliance with those requirements.
- . The conferees intended that the implementation of the [Section 109] be consistent with and not disrupt those existing understandings.
- . The conferees recognized that under a Memorandum of Understanding between the NRC and FEMA, FEMA is now conducting a review of all existing State plans and other preparations for responding to an emergency. The conferees do not intend to disrupt this ongoing effort or to require duplication of effort by NRC and FEMA. Rather, the conferees intend that NRC and FEMA work cooperatively to avoid duplication in this effort to satisfy [the] reporting requirements [to the Congress which Section 109 imposes on the NRC].
- . The conferees expressed the intent that ultimately every nuclear power plant will have available to it a state emergency response plan that provides reasonable assurance that the public health and safety in the event of an emergency at the plant requires protective action.

It would appear from all of the foregoing that the conferees intended that section 109 be compatible with ongoing NRC efforts in the emergency preparedness area. NRC will, however, have to consult and coordinate with FEMA in complying with the reporting requirements to the Congress on the results of the review and assessment of state plans.

3. Section 110: Systematic Safety Evaluation Plan

Section 110 directs the Commission "to develop, submit to the Congress, and implement, as soon as practicable after notice and opportunity for public comment, a comprehensive plan for the systematic safety evaluation of all currently operating utilization facilities required to be licensed under section 103 or section 104(b)" of the Atomic Energy Act.

Not later than 90 days from the date of enactment of P.L. 96-295 (June 30, 1980), the Commission "shall report to the Congress on the status of efforts" regarding the comprehensive plan for the systematic safety evaluation (SSE) of these facilities.

Section 110 also enumerates what the plan "shall include" in its subsection (b). According to the Conference Report (at p. 28), the things listed in that subsection are those which "at a minimum" must be included in the plan. Among other things, subsection 110(b) directs the NRC to:

- . Identify each current rule and regulation, compliance with which the NRC specifically determines to be of particular significance to protection of the public health and safety.
- . The Conference Report says the following on the foregoing (at p. 28): ... [the language] requires a detailed review by the Commission itself to identify those rules and regulations that are of particular health and safety significance for the presently operating plants. Under the language, information on plant compliance is required only for those rules and regulations. This careful selection process is intended to focus the ... plan on those NRC requirements that are of particular significance in assessing the overall safety of the presently operating plants.
- . Determine, for each presently operating plant, the extent to which the plant meets the specific rules and regulations identified by the Commission. In determining the extent of compliance, the NRC must indicate where such compliance was achieved by use of Division 1 regulatory guides, staff technical positions, or equivalent means.
 - . The Conference Report notes (at p. 29) that this language is an acknowledgment by the conferees that licensees can meet safety requirements in several ways.
- . Develop a list of the generic issues set forth in NUREG-0410 for which technical solutions have been developed; a determination by the Commission of which such technical solutions should be incorporated in its rules and regulations; and the preparation of a schedule for developing a technical solution for the generic issues in NUREG-0410 which have not yet been technically resolved.

The Conference Report (at p. 29) states that the conferees expect the NRC to complete, submit to Congress, and implement the plan expeditiously, even after the expiration of fiscal year 1980. The conferees also indicated (Ibid.):

- . The section is not intended to in any way prejudice the NRC's continuing statutory responsibility to adopt additional regulatory requirements and guidelines to protect the public health and safety.
- . The NRC's identification of certain rules and regulations as particularly significant to the protection of public health and safety does not in any way reflect upon those rules and regulations not so identified.
- . Congress must monitor closely the implementation of this section, and review the need for further action to assure the timely and meaningful completion of the SSE of each existing nuclear power plant.

4. Section 106: NRC Emergency Response Plan

Section 106 directs the NRC to develop a plan for agency response to accidents at a utilization facility licensed under section 103 or section 104(b) of the Atomic Energy Act. Section 106 also directs that the plan shall be forwarded to the Congress on or before September 30, 1980.

The Conference Report includes the following guidance (at p. 23):

- . The conferees expect the NRC, in preparing the plan, to rely upon the TMI Action Plan developed by its Lessons Learned Task Force and other studies that have been performed as a result of the TMI accident.
- . The conferees "expect that the NRC will consider" procedures for:
 - . Timely notification to the NRC by the licensee of any accident.
 - . Communication within the NRC.
 - . Communication among the NRC, appropriate state and local officials and the licensee
 - . The appointment of one Commissioner to assure authority for the Commission's response during an accident or unanticipated event.

- . The need to make recommendations on evacuation, in consultation with the Director of FEMA.
 - . The availability of complete and accurate information concerning facility design and equipment.
 - . The availability of expert advice and assistance.
 - . Designation of an NRC representative at the site of a reactor suffering an accident.
5. Other Matters in Title 1

a. Section 107: Ocean Dumping of Nuclear Wastes

Section 107 says that "[n]o funds appropriated pursuant to this Act may be used for the purpose of providing for the licensing or approval of any disposal of nuclear wastes in the oceans."

The Conference Report sheds no light (see pp. 23-24) on this provision. Pertinent legislative history is on p. S.9491 of the Cong. Rec. of July 16, 1979. This legislation in substantial effect states what is required under existing law (e.g., the Marine Protection, Research and Sanctuaries Act). Among other things, the section would not preclude the use of funds for research and development of ocean disposal; apparently it is not intended to cover low-level radioactive effluent discharges from commercial nuclear power plants into the ocean, and is limited, in any event, to the time constraints of the FY 80 authorization bill (i.e. until October 1, 1980) (Ibid.).

b. Section 105: Congressional Notification of Plan to Ship Spent Fuel to Pacific Islands.

Except for the cleanup of Bikini and Eniwetok Atolls, this provides conditions which must be satisfied in advance prior to the transportation of spent nuclear fuel or high-level radioactive waste for storage on any territory or insular possession of the United States or the Trust Territory of the Pacific Islands. The procedure calls for a report by the President to the Congress at least 30 days in advance of any such transfer.

c. Subsection 101(d): Senior Contract Review Board

This subsection requires the Commission to establish a Senior Contract Review Board within 60 days of the enactment of P.L. 96-295 (June 30, 1980). The Board is to be appointed by, is accountable to, and is to operate under the direction of the Commission. The function of the Board is to approve the placement of any new work, or any substantial modification of existing

work with another Federal agency, or any research contract or research contract modification in an amount greater than \$500,000. If the amount of such placement, contract, or modification is \$1 million or more, the Commission, by a majority vote, must approve it. Prior to the award of any such placement, contract or modification, the Review Board must secure a detailed description of work and ensure that alternative methods of procurement have been considered.

III. Title III: Other Provisions

Title III of P.L. 96-295, with the heading "Other Provisions" also includes substantive directions to the Commission and others. A brief overview of these remaining provisions follows:

1. Section 301: Notification of State Governor of Nuclear Waste Shipment

Section 301 directs the NRC within 90 days of the enactment of P.L. 96-295 (June 30, 1980) to promulgate regulations providing for the timely notification to the Governor of any State prior to the transport of nuclear waste, including spent nuclear fuel, to, through or across the boundaries of such State. This notification requirement shall not apply to nuclear waste in such quantities and of such types as the Commission specifically determines do not pose a potentially significant hazard to the health and safety of the public. The section also includes a definition of "State", which for all practical purposes, is essentially the same as the definition of "United States" in subsection 11 bb. of the Atomic Energy Act of 1954, as amended.

2. Section 302: NRC Management Study

This section directs NRC to enter into a contract for an independent review of the Commission's management structure, processes, procedures and operations. The review shall include an assessment of the effectiveness of all levels of agency management in carrying out the Commission's statutory responsibilities, in developing and implementing policies and programs, and in using the personnel and funding available to it.

The contract must provide for a report of the findings and recommendations of the review to the Commission not later than one year from the date of enactment of P.L. 96-295. Moreover, the section provides that the Commission shall promptly transmit such report to the Congress.

The section calls for a comprehensive management study of the NRC. Presumably the report to the Congress is expected to be only that provided by the contractor without, initially at least, the views of the Commission. This seems to be the purpose of the "promptly transmit" words in the final sentence in the section.

3. Section 303: Licensing Fees and Annual Report

This section requires that the information called for therein be included in the Commission's annual report to the Congress. The information would contrast the fees paid to the Commission with the direct and indirect costs to the Commission for the issuance of any license or permit and for the inspection of any facility.

Presumably only utilization facility license fees would be included, but this is not clear. The Conference Report sheds no light on this score. This requirement was included in the bill (H.R. 2608) as reported by the Committee on Interior and Insular Affairs. See H. Rep. 96-194, Part 1, 96th Cong. 1st Sess., at p. 10 (May 15, 1979).

4. Section 304: National Contingency Plan

This section directs the President to prepare and publish, on or before September 30, 1980, a National Contingency Plan to provide for expeditious, efficient, and coordinated action by appropriate Federal agencies to protect the public health and safety in the case of accidents at any utilization facility licensed under section 103 or 104b.

The Conference Report (at p. 37) says that the conferees "expect that the President will especially consider":

- . designation of an interagency task force with FEMA as lead agency, and consisting of personnel who are trained, prepared, and available to provide necessary services to carry out the plan.
- . Assignment of duties and responsibilities among Federal Department and Agencies.
- . Identification of an official of the lead agency as the task force coordinator at the facility site.
- . Establishment of a national center to provide coordination and direction in plan implementation.
- . Identification, procurement, maintenance and storage of equipment and supplies.

The Conference Report also asserts that the conferees expect that the President shall incorporate into the national plan the emergency response plan of the Commission "developed under section 203 of this Act." (*Ibid.*). (The reference to section 203 which is concerned with criminal penalties, is obviously in error. The reference should be to section 106 which directs

the NRC to develop an emergency response plan.) The conferees note further (at p. 37) that:

- . The same determination by the Commission of a possible or actual accident, which would trigger the NRC's emergency plan, should also trigger implementation of the National Contingency Plan.
- . The National Contingency Plan will improve upon the Inter-agency Radiological Assistance Plan which was in effect at the time of the accident at TMI, but which exhibited serious deficiencies.

5. Section 305: Communications Systems

This section directs the NRC "as expeditiously as possible" to establish a mechanism "for instantaneous and uninterrupted verbal communication" between each utilization facility [licensed to operate on the date of enactment of P.L. 96-295, or thereafter] and Commission headquarters and the appropriate regional office.

The section also directs the Commission, within 90 days after the date of enactment of P.L. 96-295 to transmit to Congress a study of alternative plans for instantaneous and otherwise timely transmission to the Commission of data indicating "the status of principal system parameters" at utilization facilities which are licensed to operate.

Finally, the section directs that for each such alternative, the study shall present: procedures for transmitting and analyzing such data, and a Commission statement (recommendation) on the advantages, disadvantages and desirability of the options studied.

6. Section 306: Study of NRC-Licensee Communications During TMI Accident

This section directs the NRC to undertake a "comprehensive investigation" of all aspects of communications (the details are set forth in the section) in the 30-day period immediately following the TMI accident on March 28, 1979.

The Commission is directed to report to the Congress on the findings and recommendations of the investigation by September 30, 1980.

The Commission is directed to implement "as soon as practicable," each recommendation not requiring legislation, and shall incorporate the recommendation in the plan for agency response promulgated pursuant to section 304 of P.L. 96-295.

Section 304, it may be recalled, is the National Contingency Plan. The NRC's response plan is called for in section 106. Presumably, the failure to refer also to section 106 was inadvertent. In any event, both the plans (NRC and National Contingency) are called for on or before September 30, 1980.

7. Section 307: Plan for improving the technical capability of licensee personnel.

This section directs the Commission to prepare a plan for improving the technical capability of "licensee personnel to safely operate" utilization facilities licensed under section 103 or 104b. The Commission is directed to transmit the plan to Congress within six months after the date of enactment of P.L. 96-295 and to implement "as expeditiously as practicable" each element thereof not requiring legislation.

The section includes extensive directions on what the plan is to include. These statutory directions cover things such as specific criteria for more intensive training and retraining of operator personnel licensed under section 107 of the Atomic Energy Act, provision for Commission review and approval of the qualifications of personnel conducting any required training and retraining program, requirements for the renewal of operator licenses, and criteria for suspending or revoking operator licenses. In other words, most of the major recommendations in this area by others who conducted studies or investigations of the TMI accident are now covered by these statutory directions.

This section also directs the NRC to study "the feasibility and value" of licensing, under section 107 of the Atomic Energy Act, "plant managers"... and senior licensee officers responsible for operation" of utilization facilities. The report on this study must be sent to the Congress within six months of the date of enactment of P.L. 96-295. Again, the statute directs the Commission to "expeditiously implement" each such recommendation not requiring legislation.

8. Section 308: Epidemiological Study of TMI

This section amends section 5(d) of the NRC's authorization Act for FY 1979 (P.L. 95-601) so that the study called for there (by EPA, NRC, HHS) shall evaluate the feasibility of epidemiological research on health effects of low-level radiation resulting from the TMI accident and actions associated with plant stabilization and clean-up.

The report is called for by September 30, 1980.

IV. Epilogue

The Conference Report includes the following concluding paragraphs (at pp. 38-39):

Reporting Requirements

The conference agreement directs NRC to undertake certain studies and report to the Congress on the results of such studies. The conferees are aware that the Commission, independent of this congressional mandate, has initiated various studies and investigations as part of the Commission's response to the accident at Three Mile Island. To the extent that ongoing NRC studies can be used in response to reporting requirements set forth in the conference agreement, the conferees direct the Commission to eliminate needless duplication and expense by using as many such ongoing studies as possible. (emphasis supplied).

Commission Regulatory Authority

Unless expressly changed by provisions in this conference agreement, the conferees intend that the Commission retain its existing regulatory authority.

Intended Meaning of "Accident"

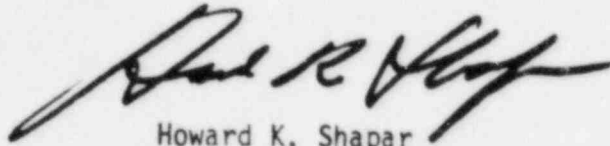
Throughout this conference agreement the term "accident" is used. The conferees intend that this term include any unplanned event or incident that increases the likelihood of a radioactive release exceeding limits established by the Commission for normal operation of a utilization facility licensed under sections 103 or 104(b) of the Atomic Energy Act of 1954, as amended.

* * *

We end this trip through the substantive provisions of P.L. 96-295 and its accompanying Conference Report with both the qualification and invitation given at its beginning. The material herein is a picture of the landscape of the substantive provisions of P.L. 96-295, in particular its changes to existing law and the substantive directions it imposes on the NRC. The purpose here is not to provide a legal analysis of

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the many legal issues and questions which may arise as a part of the actions needed to carry out those changes and directions. Such detailed legal analyses and service will be given when the issues or questions develop in the staff actions to implement the specific provisions of P.L. 96-295.



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