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

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MEMO TO: Harold R. Denton, Director
Office of Nuclear Reactor Regulations

FROM: Guy H. Cunningham, III
Executive Legal Director

SUBJECT: REGULATIONS TO IMPLEMENT LEGISLATION ON
(1) TEMPORARY OPERATING LICENSING AUTHORITY AND (2) NO SIGNIFICANT
HAZARDS CONSIDERATION (THE "SHOLLY AMENDMENT")

This note is to alert you that the subject legislation will impact the routine of your office. (See enclosed package to Commission.) As you know, the Senate and House conferees have agreed on NRC's Authorization Act for Fiscal Year 1982 and 1983 which, among other things, authorizes us to issue (1) temporary operating licenses and (2) requested operating license amendments involving no significant hazards consideration before the conduct of any hearing. The legislation also directs us to promulgate within 90 days of enactment, regulations which establish: (a) standards for determining whether an amendment to an operating license for a production, utilization or testing facility involves no significant hazards consideration; (b) criteria for providing or, in an emergency, for disposing with prior notice on such a determination; and (c) procedures for consultation on such a determination with the State in which the facility of the licensee requesting the amendment is located.

I sent you a draft of the Commission paper and regulations several months ago, as soon as we had a copy of the conference agreement. Your staff has provided mine with comments on that draft. We now have available the Conference Report, and, based on it, have drafted a final Commission paper and regulations, also taking into account your staff's comments.

The regulations on the temporary operating license and on the standards for determining whether an amendment involves no significant hazards consideration should not impact your office in any important way. However, the public notice and state consultation procedures will change your office's daily routine.

The legislation requires that NRC:

"shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued or proposed to be issued... Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or

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proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment."

The legislation also requires that NRC:

"shall during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing... (ii) criteria for providing or, in emergency situations, disposing with prior notice and reasonable opportunity for public comment on any such determinations [about whether any amendment to an operating license involves no significant hazards consideration], which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located."

Though the regulations outline a framework for dealing with the public notice and comment and State consultation provisions, your office will have to work out specific and detailed procedures within that framework. This is especially important because the regions will be involved directly and autonomously with these procedures.

It is clearly apparent that the procedures will have to spell out in detail everyone's tasks in order not to slow down the amendment process. Several problems come readily to mind. First, there may be a proliferation of notices: notices of proposed action on license amendments, including a finding of no significant hazards consideration; notices of issuance of amendments; notices of a significant hazards determination; hearing notices; and so on. I think that a procedure can be set up under which all of these notices can be combined in the monthly Federal Register notice provided for in the legislation. The regulations in the Commission package are based on this thought.

Second, snags will develop in the amendment process unless ways can be found to expedite it while keeping within the framework of the legislation. Your staff and mine will have to work these out in the next few days. In this regard, Tom Dorian of my staff has sent the enclosed note to your staff.

Third, the State consultation provisions may become problematical, even though the legislation does not give the States veto power over a proposed no significant hazards determination or authorize them to insist on a postponement of a determination or an issuance of an amendment. I believe this problem can be dealt with in the regulations by (1) making the licensee, rather than us, provide a State with a copy of its amendment application and its analysis about no significant hazards consideration, indicating on its application to us that it has done so; (2) sending to a State a copy of our proposed determination included in the monthly Federal Register notice; and

(3) providing for telephone consultation in an emergency where normal procedures cannot be followed.

Since the lame duck session may pass our authorization legislation and since that legislation requires our very quick action (we have 90 days to act), I would like to send the final rulemaking package to the Commission by mid-November with all the problems resolved. Tom Dorian of my staff (492-8690) and Bob Purple, Mark Williams, and Charlie Trammell of your staff have been involved in the various Commission packages. I appreciate your prompt attention.

Original signed by
Guy H. Cunningham, III

Guy H. Cunningham, III
Executive Legal Director

cc: WJDircks, EDO
DEisenhut, D/DL

Enclosure:
As stated

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