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

SECRETARIAT RECORD COPY

JUN 14 1978

MEMORANDUM FOR: Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford

FROM: Carlton Kammerer, Director
Office of Congressional Affairs

SUBJECT: QUESTIONS AND ANSWERS FOR THE RECORD, HOUSE HEARINGS ON EPA ROLE IN RADIATION PROGRAMS OVERSIGHT

Attached are proposed answers to questions asked for the record of the recent hearing on federal radiation programs oversight by the Subcommittee on Environment, Energy and Natural Resources of the House Committee on Government Operations. The Subcommittee is chaired by Representative Leo Ryan. Mr. Robert Minogue represented the Comission in testimony before the Subcommittee.

If you have any comments regarding the proposed answers, please provide them to our office by C.O.B., Friday, June 16. We have promised to deliver the NRC responses to the Subcommittee on Monday, June 19, 1978. Contact: Steve Kent (634-1443).

cc: OGC
OPE
SECY

Kammerer to Hendrie
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3 RADIATION Vol. 3
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AEC/NRC

Question 1. In your testimony of April 19, you referred to regulatory duplication between the EPA and NRC. You referred to confusion and duplication of regulations.

a. Would you expand on that observation?

b. Please cite specific examples of duplication and of confusion.

Answer: My testimony of April 19, 1978,describes the overlap between the EPA authority for setting generally applicable environmental radiation standards and the NRC authority for regulating effluents from licensed nuclear activities and/or facilities. Both of these EPA and NRC authorities are from the Atomic Energy Act of 1954, as amended. My testimony also dealt with the Clean Air Act. A similar overlap is apparent in setting standards for residues of decommissioned licensed facilities. Another area of overlap is in nuclear waste management. The President's Nuclear Waste Management Plan and Fact Sheet, October 27, 1976, is enclosed as Appendix "A". Where roles of the various agencies have been addressed in the text, the citation is noted in the margins. EPA is mentioned only in the Fact Sheet rather than in the formal Statement by the President on Nuclear Policy. Nevertheless, both the EPA and the NRC have interpreted the reference as calling for promulgation by each of regulations applying to the same areas of radiological risks and environmental impact.

Additional examples of overlap of authorities between EPA and NRC may be found in Appendix "B" which presents a summary of relationships between NRC and other agencies (including EPA). Appendix "B" is a portion of

an NRC response which was prepared to answer questions from the Committee on Commerce, Science, and Transportation--Hon. W. G. Magnuson, Chairman. Lines have been added in the margins to indicate the portions of the text which address the EPA/NRC overlaps.

Question 2. You indicated in your testimony that the record of ... in radiation protection shows the agency to be "wanting".

a. Do you believe that EPA's record is poor because of its limited legal authorities?

b. Do you believe that EPA's record is poor because of a lack of resources or a lack of leadership, or a lack of scientific expertise, or a combination of these factors?

Answer:

I personally think that EPA's legal authority in the FRC role is reasonably clear. In any event, EPA has shown an obvious reluctance to make full use of this FRC authority, and I believe that has been a major factor in its failure to come to grips with many of the issues in a timely manner. The NRC has been supportive of the EPA's use of the FRC authority because we felt that an effective FRC function is essential to a coordinated approach among the responsible agencies to the broadly applicable issues of radiation protection. We anticipated that the FRC procedures would provide a good mechanism for the resolution of comments and problems cited by agencies impacted by proposed guidance. We also thought that regulations promulgated under FRC authority would tend to be more "umbrella-like" in nature and be less likely to overlap the details of NRC regulations.

Question 3. In your testimony you said, "If I were in charge of that program at EPA, I would have gone after everything with that authority and they have not."

A. What specific things do you believe should be done by the person in charge of the EPA radiation program?

Answer: The breadth of radiation protection issues is great, covering a wide range not only of regulatory agencies but also of Federal agencies which conduct activities involving radiation exposure. The best way to come at these broad questions is through use of the FRC authority which rests with EPA. That authority provides a framework in which the radiation protection efforts of all the Federal agencies can be coordinated and basic standards set. These basic standards or guidelines then would be implemented in detail either by the affected regulatory agencies, that is, by regulatory agencies like the NRC regulating the nuclear power industry; or by the Federal agencies engaged in defense programs or in conduct of medical programs involving radiation exposure. Further, an essential element in the effective application of the FRC role is an oversight function to assure that the agencies implementing the FRC guidance do so in a manner consistent with and effectively achieving the intent of the basic standards.

Question: What has been the view of the NRC towards the EPA-developed nuclear fuel cycle standards? Please provide copies of NRC (AEC) comments and suggestions concerning the various EPA drafts of those standards.

Answer: Generally speaking, NRC has viewed the EPA-developed nuclear fuel cycle standards (40 CFR Part 190) as an unnecessary and costly overlay on the existing NRC program for assuring protection of public health and safety from low levels of radioactive material released in the routine operations of facilities comprising the uranium fuel cycle. Many of the requirements of 40 CFR 190 duplicate areas already covered by previously existing NRC regulations. Without providing any significant change in the level of health and safety protection for the public, they are requiring significant changes in regulatory and compliance efforts. This seems to be an unproductive use of public resources. On the positive side, 40 CFR 190 does address other issues not previously covered by NRC regulations. Further, we believe that the EPA rulemaking procedure including the public meeting resulted in a better understanding of the operation and impact of uranium fuel cycle facilities and, thus, improved the public acceptance. Appendices "C" and "D" are the NRC and staff comments and testimony presented to EPA during the course of the rulemaking.

Question 5. What is NRC's view of the EPA nuclear fuel cycle standards now that they have been adopted?

Answer: Our view of the EPA nuclear fuel cycle standards is substantially as stated in the previous answer. The promulgated regulation reflects modifications from the proposed regulation in response to some of our comments. In view of the substantial effort required to revise the existing NRC regulations to implement the EPA standard and to write the Regulatory Guides (which inform the licensees how they can satisfy the NRC that they are in compliance with the regulations), EPA also revised the date of compliance.

Question 6. Does NRC foresee problems with the implementation of EPA nuclear fuel cycle standards?

Answer: There are still substantial uncertainties as to whether all provisions of the EPA fuel cycle standard can be implemented and compliance demonstrated. The Administration's decision not to go forward with processing of spent fuel at this time will delay having to face the major technical problems of recovery and retention of Kr-85, I-129, and transuranic isotopes, as required by 40 CFR Part 190. However, it does require us to consider the possibility of releases of these nuclides from extended storage of spent fuel and possible disposal of the spent fuel as waste. There appear to be some problems in meeting the EPA standards' limits for uranium mill tailings and effluents from UF_6 facilities. Other problems may occur when actual implementation is attempted. Currently the NRC staff implementation problems are associated with amending regulations, writing Regulatory Guides, and modifying technical specifications--which are part of the licenses of operating reactors.

Question 7. Do you believe that EPA's responsibilities for the coordination of Federal radiation protection programs could be better performed by a reconstituted Federal Radiation Council?

Answer: The responsibilities for the coordination of Federal radiation programs could be performed either by EPA in an FRC role or by a "reconstituted FRC". The EPA has a broad constituency and would perhaps be perceived as more objective than a reconstituted FRC. However, if EPA should be reluctant to use the FRC authority or, in using it, is unable to develop procedures which assure the affected agencies that their legitimate concerns will be fairly considered and resolved, then some form of reconstituted FRC may be preferred.

Question 8. If the Congress determined to reestablish the Federal Radiation Council, what authorities and responsibilities do you believe such Council should possess?

Answer: A reconstituted FRC should have authorities to coordinate radiation protection efforts of Federal agencies, to set basic broad standards or guidelines, and to oversee the activities implementing the basic standards. A reconstituted FRC should have authorities at least as broad as those of the late FRC and perhaps broader since the FRC should be administratively independent of Federal agencies but free to draw on the various agencies for technical expertise on an ad hoc basis. Procedures to be followed by a reconstituted FRC should include provisions for identifying and resolving differences among agencies, and "sunshine" features which would provide to the public information on the basis for decisions made. The FRC procedures should also include provisions for obtaining comments from the public, the states, the industry and other interested parties prior to promulgation of rules or guidelines.

Question 9. Do you believe the interagency work group that existed under the FRC had merit? Should that work group be reestablished?

Answer: The interagency ad-hoc working groups that existed under the FRC had considerable merit. This is evident from the FRC reports which were written two decades ago and which still constitute sound guidance. We understand that the FRC interagency working groups were ad hoc; and similar ad hoc interagency working groups could be established. While some ad hoc interagency working groups have been brought together by EPA to take a similar role, they have had only limited success to date for a number of reasons--such as conflicts between agencies over agency responsibilities and procedures which did not satisfactorily resolve agency concerns.

Question 10. Are you aware of problems with the operation of the former Federal Radiation Council? If so, what were those problems? What suggestions would you make to avoid duplicating those problems if Congress chose to vest responsibility for Federal radiation protection coordination in an organization like the old FRC?

Answer: The NRC did not exist during the period when the FRC functioned as a separate group, and I am not aware of any NRC personnel on our current staff who served on an FRC interagency ad hoc working group--therefore, my answers to these questions necessarily are somewhat speculative.

(a) The FRC was composed of a number of agency heads who generally were not knowledgeable in radiological matters. Thus, "agency views" were by and large reflections of the technical advice given to the agency heads.

(b) There were few, if any, provisions for keeping the public, industry, States, or other agencies aware of the progress being made by the FRC, resolution of differences, basis for decision making, or procedural matters. This could be remedied by adopting procedures with "sunshine" features.

(c) From candidate topics suggested by the various agencies, the FRC selected the topics which it chose to address. It is not clear to me that the selection process worked to assure an organized approach to the total problem in an efficient manner.

(d) Under the FRC, the issuance of guidelines was frequently a *fait accompli* by the time most persons became aware that guidance for a topic was being considered. Again, appropriate procedures could remedy this problem.

(e) The FRC could have been perceived as lacking in objectivity owing to the dominant roles of certain agencies. Again, appropriate procedures in the charter could eliminate this concern.

Question 11. If Congress [illegible] to create a coordinating council to be responsible for radi[illegible]on protection coordination, what would be the appropriate place within the Federal Government for this organization?

Answer: I am not sufficiently informed of the problems which existed with the old independent FRC organization to be fully responsive to this question. I have indicated in previous answers some of the procedural safeguards which I consider important.