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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'87 JUN 15 A9:51

Before Administrative Judges:
Helen F. Hoyt, Chairperson
Gustave A. Linenberger, Jr.
Dr. Jerry Harbour

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

PUBLIC SERVICE COMPANY OF NEW)
HAMPSHIRE, ET AL.)

(Seabrook Station, Units 1 and 2))

) Docket Nos.
) 50-443/444-OL
) (Off-Site EP)
) June 11, 1987
)

ATTORNEY GENERAL JAMES M. SHANNON'S MOTION
FOR PARTIAL SUMMARY DISPOSITION ON
TOH REVISED CONTENTION XVIII, SAPL
CONTENTION 16, AND NECNP CONTENTION RERP-8

Attorney General James M. Shannon pursuant to 10 C.F.R.
§ 2.749 hereby moves the Board to grant partial summary
disposition in favor of the intervenors on ToH Revised
Contention XVIII, SAPL Contention 16 and NECNP Contention
RERP-8. In essence, these contentions provide, in part, that
the NHRERP, Revision 2, fails to provide reasonable assurance
that adequate protective measures can and will be implemented
with respect to the seasonal beach population, because there
are no provisions, or inadequate provisions, in the RERP for
sheltering the beach population, and because the RERP has not

developed a range of protective actions for that population as required by 10 C.F.R. § 50.47(b)(10). The Attorney General contends that there is no issue of fact with respect to this issue of whether the NHRERP, Revision 2, provides for sheltering of the seasonal beach population and that as a matter of law this issue must be decided in the intervenors favor.

ToH Revised Contention VIII reads:

Revision 2 fails to provide adequate emergency equipment, facilities, or personnel to support an emergency response and fails to demonstrate that adequate protective responses can be implemented in the event of a radiological emergency. 50.47(b)(1)(8)(10).

One of the stated bases of ToH Revised VIII, is:

Basis: In preparing the Hampton RERP, the State relies upon a "shelter-in-place" concept as a "valuable protective action" [in] that it can be implemented quickly, usually in a matter of minutes." RERP, pgs. II-25, 26. The Hampton RERP acknowledges, however, that "sheltering may not be considered as a protective action on Hampton Beach during the summer." RERP, pg. II-25. The plan thereby fails to provide reasonable assurance that adequate and immediate protection measures will be available to the thousands of beachgoers in the event of emergency. Under its RERP, therefore, the Town is required to rely upon evacuation as the sole means of avoiding radiological exposure to large segments of the population. Since a "major portion" of radioactive material may be released within one hour of the initiating event, NUREG, pg. 17, and present estimates indicate evacuation could take up to seven and one-half hours, RERP, II-32, RERP measures for evacuation are a wholly inadequate protective response to meet an emergency.

SAPL Contention 16 provides:

The New Hampshire State and local plans do not make adequate provisions for the sheltering of various segments of the populace in the EPZ and therefore the plans fail to meet the requirements of 10 C.F.R. § 50.47(a)(1), § 50.47(b)(1) and NUREG-0654 II.J.10.a. and m.

The basis of SAPL Contention 16 provides in pertinent part:

Basis: 10 C.F.R. § 50.47(b)(10) requires that a range of protective actions be developed for the plume exposure pathway EPZ. NUREG-0654 requires that there be maps of shelter areas and the inclusion of the bases for the choice of recommended protective actions from the plume exposure pathway during emergency conditions. NUREG-0654 II.J.10.m. specifies that the expected level of protection to be afforded in residential and other units must be evaluated. The New Hampshire State and local plans fail to meet these requirements because there are no provisions for sheltering the population in the beach area and no provisions for the sheltering of the population in the many camping areas in the EPZ. In a quickly developing accident with anticipated fast release of short duration, sheltering could be the only realistic protective action that could be implemented. Evacuation of all transients is supposed to be carried out, according to the plans, if an evacuation is ordered. There is, however, no realistic description as to how this can be done. Given the current status of these plans and the lack of availability of sheltering capability for large segments of the population, a reasonable level of assurance that adequate protective measures will be available for transients in beach or camping areas has simply not been attained.

NECNP Contention RERP-8 provides:

The New Hampshire RERP does not provide a "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency," as required by 10 C.F.R. § 50.47(a)(1), in that the plan does not provide reasonable assurance that sheltering is an "adequate protective measure" for Seabrook. Nor does the plan provide adequate criteria for the

choice between protective measures, as required by § 50.47(b)(1)) and NUREG-0654, § II.J.10.m.

The NHRERP provides that "New Hampshire will rely on two protective actions for limiting the direct exposure of the general public within the Plume Exposure EPZ. These are sheltering and evacuation." Vol 1, § 2.6.5, at 2.6-4. There can be no dispute, however, that NHRERP, Revision 2, makes no provision for sheltering the summer beach population. The plan expressly provides that: "Sheltering may not be considered a feasible protective action on the seacoast beaches during the summer." NHRERP, Rev. 2, Vol. 1, § 2.6.5 at 2.6-7; Seabrook RERP, Vol. 16 at II-31; North Hampton RERP, Vol. 19 at II-26; Rye RERP, Vol. 20 at II-26. See also, Hampton RERP, Vol. 18 at II-26 ("Sheltering may not be considered as a protective action on Hampton Beach during the summer."). The State of New Hampshire has stated in response to interrogatories propounded by the Massachusetts Attorney General that, "The RERP provides at Section 2.6.5 (at 2.6-6) that the transient population, which includes the transient beach population, should, when sheltering is recommended, leave the EPZ." The State of New Hampshire's Responses to Attorney General James M. Shannon's Off-Site EP Interrogatories and Request for Production of Documents, dated March 18, 1987, at p. 32 (Response to Interrogatory No. 75). See also, The State of New Hampshire's Responses to Attorney General James M. Shannon's Off-Site EP Interrogatories and Request for Production of Documents to the

State of New Hampshire (Set No. 2), dated June 4, 1987, at p. 18, Response to Interrogatory No. 36 ("The State's position with regard to sheltering the transient beach population . . . is provided in the State's response to Interrogatory 75 of Attorney General Shannon's off-site interrogatories provided on March 18, 1987."). There is only one very limited exception to this provision noted by the State, which is: "should a limited number of the transient population not have access to means to evacuate, they may be requested to take shelter at the locations they are visiting. . . ." The State of New Hampshire's New Response to Attorney General Shannon's No. 75, at p. 32 (emphasis added).

Although the NHRERP provides that "[e]xcept for the institutionalized population, sheltering and evacuation will be implemented on a municipality-by-municipality basis in New Hampshire," Vol. 1, § 2.6.5, at 2.6-7, this is not the case for the seacoast beach population. The beach populations will be directed to evacuate even in the event of a General Emergency in which the remainder of the population in the municipality is advised to shelter. See Vol. 4, Appendix G, at G-25, G-28; Vol. 4, Appendix F, at F-11; Vol. 4A, Appendix U at U-11. See also, Vol. 18 at II-26, Vol. 16 at II-31, Vol 20 at II-26. The seasonal beach population will be directed to evacuate even in those cases where projected evacuation doses are higher than projected sheltering doses calculated for the general population. See Vols. 4A, App. U; Vol. 1 at 2.6-25, 2.6-26; Vol. 4, App. G. In fact, persons on Seabrook and Hampton

beaches will be directed to evacuate even before projected off-site doses have been calculated and recommended protective actions for the general population have been determined. See Vol. 4A, App. U; Vol. 1 at 2.5-1, 2.6-25; 2.6-29; Vol. 4, App. G.

Although the applicants now state, in response dated April 10, 1987 to Attorney General Shannon's Motion for Summary Disposition on ToH VIII and SAPL 16 and in response to interrogatories, that evacuation is merely the "preferred" protective response for the summer beach population and that the NHRERP does not preclude sheltering of that population, that is not the case. The NHRERP does not label evacuation the "preferred" protective response for the beach population; it states unequivocally that "sheltering may not be a feasible protective action on the seacoast beaches during the summer." NHRERP Rev. 2, Vol. 1, § 2.65 at 2.6-7 (emphasis added). Nowhere in the plan is any mention even made of the possibility of sheltering the transient beach population. If evacuation were indeed just the "preferred" protective response, as opposed to being the RERP's only protective response for the summer beach population, it would have been so labelled, just as the NHRERP expressly labels sheltering the "preferred protective response" for the institutionalized population and notably discusses the possibility of also evacuating that population. See e.g., NHRERP, Rev. 2, Vol. 1 at 2.6-7.

Whatever applicants may say about the possibility of sheltering the transient beach population, it remains undisputed that the NHRERP does not plan such a response. See, e.g., Affidavit of New Hampshire Civil Defense Director Richard H. Strome, dated March 25, 1985 at ¶ 11 ("evacuation of the beach areas . . . (is in fact the protective measure for which specific plans have been developed)"). See also, Response of the Federal Emergency Management Agency to Massachusetts Attorney General James M. Shannon's Off-Site Emergency Preparedness Interrogatories and Request for Production of Documents, dated June 4, 1987, Appendix A, "Current FEMA Position on Admitted Contentions on New Hampshire Plans for Seabrook," [hereinafter "Current FEMA Position on NHRERP Contentions"] at p. 39(2) ("We understand that the plans contain no consideration of sheltering the 'day trippers' . . ."). Moreover, the very fact that the decision-making scheme set forth in the NHRERP calls, in situations where there is a "potential for release" or a "release in progress," for the immediate evacuation of Hampton and Seabrook beaches, even before assessment of projected doses and recommended protective actions for the remainder of the population are determined, see, e.g., NHRERP Vol. 1, § 2.6-25, Figures 2.6-6 and 2.6-7 [attached hereto as "Exhibit A"], precludes any consideration of the possibility of sheltering that population.

Since there can be no factual dispute, therefore, that sheltering will not be considered as a protective action for

the seasonal beach population, the only issue to be determined with respect to the above-cited bases of ToH Revised Contention VIII, SAPL Contention 16 and NECNP Contention RERP-8 is whether reliance upon evacuation, alone, as a protective response action for this population provides "reasonable assurance that adequate protective measures can and will be taken" 10 C.F.R. 50.47(a)(1). This issue may be disposed of as a matter of law in favor of the intervenors.

Section 50.47(b)(10) requires, in pertinent part, that, "[a] range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public" and that "[g]uidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place." 10 C.F.R. 50.47(b)(10) (emphasis added). As one licensing board has noted, "[t]he principal protective actions which might be taken are evacuation, sheltering and thyroid prophylaxis. Other protective actions include use of respiratory equipment and protective clothing." Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-39, 15 NRC 1163, 1184 (1982). NUREG-0654 provides that "[f]or the plume exposure pathway, shelter and/or evacuation would likely be the principal immediate protective actions to be recommended for the public. . . . The ability to best reduce potential exposure under the specific conditions during the course of an

accident should determine the appropriate response."

NUREG-0654, I.D.a at p. 9.

The New Hampshire RERP clearly does not provide a range of protective actions for the seasonal beach population within the Seabrook plume exposure EPZ; it provides only one response option for that population--evacuation. Thus, there cannot be reasonable assurance that this only available response can satisfy the requirement of NUREG-0654 that the recommended response be the one that is able to "best reduce potential exposure under the specific conditions." Indeed, the NHRERP's provision to evacuate the seasonal beach population even when evacuation doses are projected to be higher than sheltering doses virtually ensures that for some accident scenarios the protective action best able to reduce exposure--sheltering--will not be recommended.

Moreover, the Section 50.47(a)(1) requirement, that there be "reasonable assurance of adequate protective measures," by its own terms mandates that the NHRERP provide more than one response option. As the San Onofre licensing board noted, there can often be constraints, such as "inadequate lead time due to the imminence of the passage of a plume, or . . . severe weather conditions," which would make sheltering (or some other protective action) a preferred alternative to evacuation.

Southern California Edison Company, supra at 1184. See also Consolidated Edison Co. (Indian Point, Units 2 and 3)

LBP-83-68, 18 NRC 811, 990-91 (1983). This reasoning applies with even greater force to the instant case where, as stated in the basis to ToH Revised Contention VIII, one must assume that "a 'major portion' of radioactive material may be released within one hour of the initiating event, NUREG-0654, pg. 17, and present estimates indicate evacuation could take up to seven and one-half hours, RERP, II-32." See also NHRERP, Rev. 2, Vol. 6; Vol. 4, App. F. Under such circumstances, to rely on evacuation as the sole protective response is completely inadequate.

Using similar reasoning, FEMA, whose findings constitute a rebuttable presumption, has found with respect to these sheltering contentions, as a matter of fact, that the NHRERP Rev. 2 does not provide the requisite "reasonable assurance that adequate protective measures can be taken . . .". Current FEMA Position on NHRERP Contentions, pp. 38-39. Fema has concluded that:

[U]sing the standard guidance for the initiation and duration of radiological releases, and the current New Hampshire RERP including ETE, it appears that thousands of people could be unable to leave during an accident at Seabrook involving a major release of radioactivity without adequate shelter for as much as the entire duration of that release. Therefore, until these issues are resolved even if all the other inadequacies and deficiencies cited in the RAC Reviews of the New Hampshire Plans, and the Review of the Exercise of these plans were to be corrected, FEMA would not be able to conclude that the New Hampshire State and local plans to protect the public in the event of an accident at the Seabrook Nuclear Power Plant are adequate to meet our regulatory standard that such plans "adequately protect the public health and safety

by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency." (See,. 44 CFR 350.5(b)).

Id. at 39 (emphasis added).

Therefore, the Board should grant this motion for partial summary disposition on Hampton Revised Contention VIII, SAPL Contention 16, and NECNP Contention RERP-8 and should enter a finding in favor of the intervenors.

Respectfully submitted,

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Dated: June 11, 1987

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

1. NHRERP, Rev. 2 generally relies on two protective actions, sheltering and evacuation, for limiting the direct exposure of the general public within the Seabrook Station Plume Exposure EPA.

2. Revision 2 of NHRERP provides that "sheltering may not be considered a feasible protective action on the seacoast beaches during the summer."

3. NHRERP, Rev. 2 provides that the seacoast beach population will be directed to evacuate even in the event of a General Emergency in which the remainder of the general population in a municipality in which a beach is located will be instructed to shelter.

4. In accordance with NHRERP, Revision 2, the seasonal beach population will be directed to evacuate even in those cases where, for the general population, projected evacuation doses are calculated to be higher than projected sheltering doses.

5. The NHRERP, Rev. 2, makes no provision for sheltering the seasonal beach population, except for those persons on the beaches who have no means of evacuating.

6. Evacuation Time Estimates provided in the NHRERP, Revision 2, indicate that evacuation of the beaches within the Seabrook plume exposure EPZ could take up to seven and a half hours.

Exhibit A

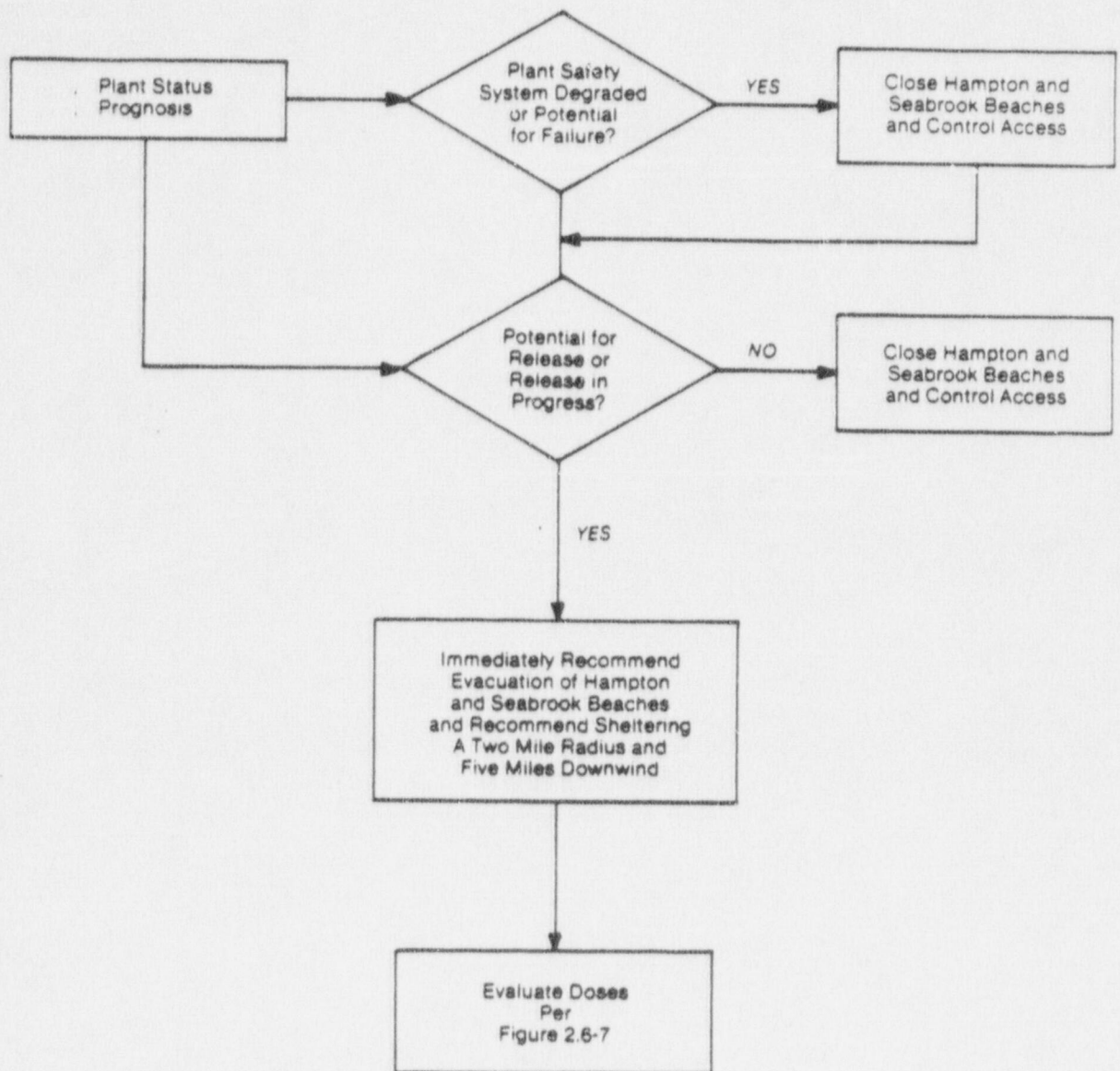


FIGURE 2.6-6 Precautionary Decision Criteria for Seasonal Populations

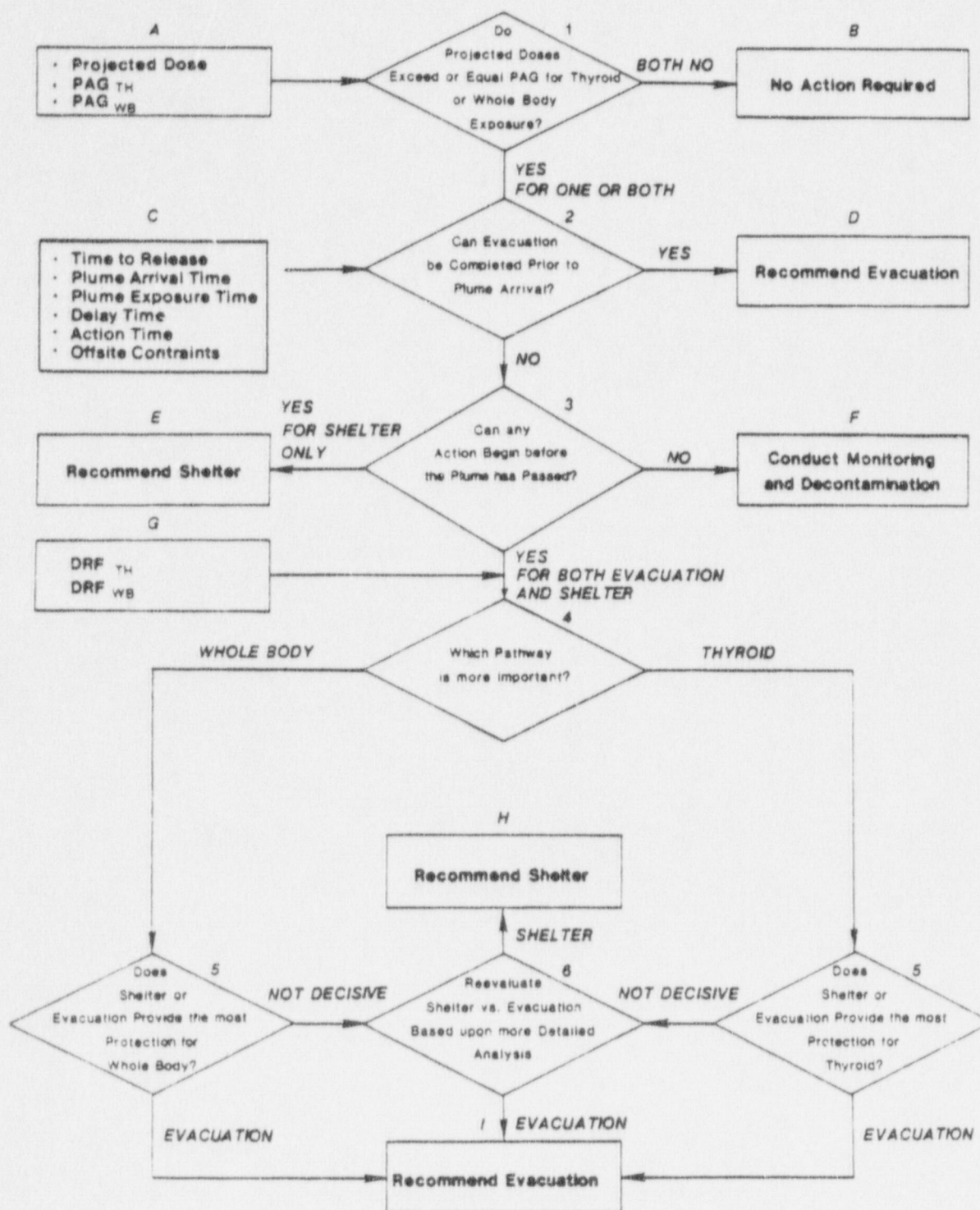


FIGURE 2.6-7 Decision Criteria for Selecting between Evacuation and Sheltering Recommendations for the Governor

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket No.(s) 50-443/444-OL

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