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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

JUDGE IVAN W. SMITH, CHAIRMAN
JUDGE RICHARD F. COLE
JUDGE KENNETH A. McCOLLOM

_____)	
In the Matter of)	
Public Service Co. of New Hampshire,)	Docket No. 50-443-OL
et al.)	50-444-OL
(Seabrook Station, Units 1 & 2))	Offsite Emergency
_____)	Planning Issues
_____)	

FEDERAL EMERGENCY MANAGEMENT AGENCY'S REPLY TO
MASSACHUSETTS ATTORNEY GENERAL'S MOTION
TO COMPEL PRODUCTION OF DOCUMENTS FROM FEMA

I. INTRODUCTION

The Federal Emergency Management Agency respectfully submits the following reply to the Massachusetts Attorney General's Motion to Compel Documents From FEMA, served on April 7, 1989. The documents sought for production concern FEMA's evaluation of the June 1988 Seabrook exercise.

Section II of this memorandum concerns documents which FEMA has withheld from production on a claim of the deliberative process privilege. Copies of the documents sought are submitted to the Board for its in camera review. Section III of the memorandum concerns documents which FEMA has withheld from production on a claim of the attorney/client privilege. Submitted with this reply are the affidavit of Richard Donovan and certificate of H. Joseph Flynn, setting forth the factual basis for the claim of the attorney/client privilege.

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II. DOCUMENTS PROTECTED FROM DISCLOSURE BY THE DELIBERATIVE PROCESS PRIVILEGE

On March 7, 1989, FEMA voluntarily produced to the Massachusetts Attorney General in response to his document request several hundred pages of agency documents relating to the June 1988 Seabrook qualifying exercise. FEMA carefully reviewed other documents encompassed by the Attorney General's request, but withheld these documents from production, identifying the withheld documents in a log submitted with its response. The Attorney General now seeks the Board to compel the production of some of these documents, notwithstanding FEMA's claim of deliberative process privilege.

The law of this case regarding FEMA's deliberative process privilege was set forth by the Board on March 30, 1989, in its ruling denying the motion of the Seacoast Anti-Pollution League (SAPL) to compel production of documents from FEMA. Hearing Transcript, March 30, 1989, pp. 17547-51. The Board stated that in NRC proceedings, the executive or deliberative process privilege is essentially the equivalent of Exemption 5 of the Freedom of Information Act. In order to overcome a claim of executive privilege, the party seeking production must affirmatively show that its interest in the litigation would be prejudiced absent production. As the Board stated:

The standard that we would apply is not relevancy and not whether it would lead to the discovery of admissible evidence, but whether it is needed for the litigation; whether the litigation would be prejudiced and would the parties be prejudiced without it. It is a much higher standard than just relevance and whether it would lead to the discovery of relevant evidence.

Tr. 17548. The Board indicated that it would be very difficult to make such a showing of need, in light of the fact that FEMA has made available Mr. Donovan and other FEMA witnesses to testify regarding FEMA's reports and conclusions

regarding Seabrook. On the other hand, the Board found that it should properly give great weight to the prospective interests protected by the executive or deliberative process privilege.

Finally, we want to point out that the executive privilege, or the deliberative process privilege is sometimes known as, depending upon the level of decisionmaker, the benefit of that is prospective. It is for the future. We thought that we could probably release this information to SAPL without unduly causing them any distress or any embarrassment or anything. These drafts are a matter of no particular moment. But that isn't the test.

If FEMA comes in here and asserts its executive privilege, it is doing so so that its agents, its employees and its officials may be free in the future to give advice to their superiors and advice to each other with assurance that absent extraordinary their advice will remain confidential.

So it is to protect FEMA's future decisionmaking process, and finding no countervailing requirement for the needs of this case that we are denying the motion.

Tr. 17550.

The Board has succinctly and correctly stated FEMA's purpose in asserting executive privilege. Furthermore, the Board's reasoning and holding was entirely in accord with the definitive statement of the United States Court of Appeals for the District of Columbia Circuit regarding Exemption 5 of the Freedom of Information Act, in Brinton v. Department of State, 636 F. 600, 604 (D.C. Cir. 1980), cert. den. 452 U.S. 905 (1981), in which the Court of Appeals stated:

The deliberative process ground for Exemption 5 protects the decision-making process of an agency, in the sense of communications related to the agency's deliberative process preceding adoption and promulgation of agency policy. The Senate Report on the FOIA observed that "it would be impossible to have any frank discussion of legal or policy matters in writing if all such writings were to be subjected to public scrutiny." [footnotes omitted]

In light of the Board's earlier ruling, FEMA believes that it properly withheld the challenged documents on the grounds of deliberative process privilege. So that the Board may rule on the instant motion to compel of the Massachusetts Attorney General, FEMA is providing to the Board in camera copies of the documents as to which it is claiming deliberative process privilege. Following is a summary of the subjects of each of these documents and FEMA's position as to why each is properly subject to the deliberative process privilege. The categories of items are those specified in the motion of the Massachusetts Attorney General, at page 2. The item numbers and identifying descriptions are from the log of withheld documents submitted by FEMA to the Massachusetts Attorney General, which was attached as an exhibit to the motion of the Attorney General.

A. Documents prepared prior to the exercise which concern the issue whether the SPMC at that time was advanced enough to permit meaningful exercise as an emergency plan

Item 12 - Letter dated 2/26/88 from Robert E. Rospenda, Argonne National Laboratory (FEMA contractor) to Edward Thomas (FEMA Reg. I) re draft listing of items needed to be addressed by New Hampshire and Maine for the Seabrook exercise

This document involves formulation of the agency's position on the items needed to be addressed by New Hampshire and Maine prior to the 1988 Seabrook exercise, arising out of the 1986 exercise and 1986 New Hampshire plan review. It is clearly predecisional material falling within the deliberative process privilege.

Item 13 - Intra-agency memoranda re the determination of list of inadequacies that should be addressed in the New Hampshire plan prior to an exercise, including: 4/4/88 - Richard W. Krimm (FEMA Asst. Assoc. Dir.) to Henry Vickers (Reg.I Director); 3/16/88 draft for review by FEMA HQ of letter to Richard H. Strome (NH) from Edward Thomas and Jack Dolan (Reg.I); draft HQ comments on 5/16/88 draft; 3/15/88 - Thomas to Krimm

These documents, which are communications between FEMA Region I and FEMA Headquarters, involve formulation of agency policy on inadequacies to be addressed by New Hampshire prior to a Seabrook exercise. They clearly are predecisional and deliberative in nature, and fall within the deliberative process privilege.

Item 25 - memorandum dated 5/26/88 from Henry Vickers (FEMA Reg.I Director) to Grant C. Peterson (FEMA Assoc. Dir.), re Seabrook Exercise: Exercise Impediments

Upon further examination, it was determined that this memorandum had been copied to the State of New Hampshire and not retained solely within the agency, and that therefore the deliberative process privilege should not apply. Copies of this document are being made available to the Board and the active litigants.

Item 37 - memorandum dated 3/18/88 from Edward Thomas (FEMA Reg.I) to Henry Vickers (FEMA Reg.I Dir.), re Seabrook

In this document, Mr. Thomas brought certain differences of view he had with Mr. Donovan regarding Seabrook issues to the attention of Regional Director Vickers. The contents are clearly predecisional and deliberative process materials generated in the course of formulating agency policy. Moreover, the intervenors can demonstrate no need for production of this document since both Mr. Donovan and Mr. Thomas have been available as witnesses in these proceedings.

Item 47 - 5/88 memorandum from Richard W. Krimm (FEMA Asst. Assoc. Dir.) to FEMA Headquarters REP staff, re briefing Grant C. Peterson (FEMA Assoc. Dir.) on Seabrook and Shoreham issues

This highly informal document concerns the preparation of a briefing on Seabrook and Shoreham outstanding issues to be taken into account by Mr. Peterson in the formulation of agency policy. It is predecisional and covered by the deliberative process privilege.

B. Documents which reflect comments by individuals on drafts of the FEMA Post-Exercise Report

Item 15 - letter dated 7/15/88 from Argonne National Laboratory to Richard Donovan (FEMA Reg.X), re comments on 7/15/88 draft exercise report

This document involves stylistic and proofreading changes in the draft exercise report. Despite the nature of its content, it is part of FEMA's deliberative process leading to the final report, and thus is properly subject to the deliberative process privilege.

Item 16 - memorandum dated 8/4/88 from Richard Donovan (FEMA Reg.X) to Richard W. Krimm (FEMA Asst. Assoc. Dir.), re draft exercise report

The memorandum transmits a copy of the draft exercise report to FEMA Headquarters for review and sets forth Mr. Donovan's proposed procedures for review and finalization of the exercise report. It is predecisional in nature, in that it concerns FEMA's determination of the final agency position reflected in the exercise report. Moreover, the intervenors have demonstrated no need for production of the document since Mr. Donovan will again be available as a witness.

Items 17, 18, 20 - letters dated 7/29/88, 7/30/88, and 9/15/88 from Argonne National Laboratory, re draft exercise report

As with Item 15 above, these documents concern stylistic and word-processing changes in the course of producing the final report. They are properly subject to the deliberative process privilege, for the reasons set forth above as to Item 15.

Item 22 - memorandum dated 11/14/88 from Richard Donovan (FEMA Reg.X) to Richard W. Krimm (FEMA Asst. Assoc. Dir.) and other FEMA HQ officials, re draft report "Status of Corrective Actions for 1988 Seabrook Exercise"

This document transmits as an attachment Mr. Donovan's draft report on status of corrective actions, and seeks headquarters review. It is clearly predecisional and subject to the deliberative process privilege.

Item 30 - letter dated 7/25/88 from Argonne National Laboratory to Richard Donovan (FEMA Reg. X), re draft exercise report

This document is of the same type as Items 15, 17, 18, and 20, and is subject to the deliberative process privilege for the same reason.

Item 31 - memorandum dated 8/2/88 from Richard Donovan (FEMA Reg. X) to Henry Vickers (FEMA Reg. I Dir.), re "Progress Report on Exercise Report and Plan Review for the Seabrook Site," pages 3 and 4 withheld from production

The withheld pages concern issues regarding allocation of FEMA resources and whether the issues should be brought to the attention of FEMA Headquarters. It is predecisional in nature and subject to the deliberative process privilege.

Item 70 - memorandum dated 8/4/88 from Richard Donovan (FEMA Reg.X) to Reg. I RAC Members and Seabrook Exercise Team Leaders, re review of 8/2/88 draft exercise report

The memorandum transmits for review the 8/2/88 draft exercise report, and sets forth Mr. Donovan's proposed process for review procedures. It is predecisional in nature and subject to the deliberative process privilege.

C. Miscellaneous Documents

Item 21 - letter dated 8/24/88 from Idaho National Engineering Laboratory to Richard Donovan, re Seabrook Station Exercise Report - Total Population Exposure Report

This document provides evaluative material regarding total population exposure in connection with the Seabrook exercise. It was intended for use in formulation of agency policy and is properly subject to the deliberative process privilege.

Item 68 - memorandum dated 3/2/88 from Richard Donovan to Dr. Joan C. Hock (FEMA HQ), re Seabrook Site visit

At the direction of the Board, this document has already been provided, in its entirety, to the litigants.

III. DOCUMENTS PROTECTED FROM DISCLOSURE BY THE ATTORNEY/CLIENT PRIVILEGE

The Massachusetts Attorney General has sought to compel disclosure of two documents which FEMA has not produced based upon a claim of attorney/client privilege. Because disclosure of attorney/client communications to any person outside the attorney/client relationship is inconsistent with the privilege, Brinton v. Department of State, 636 F.2d 600, 603 (D.C. Cir. 1980), FEMA has not provided at this point copies of these documents to the Board for in camera review. Instead, submitted with this memorandum are the affidavit of

Richard W. Donovan and the certificate of H. Joseph Flynn, which set forth the factual basis for assertion of the attorney/client privilege.

A. Attorney Flynn's Memorandum to Grant C. Peterson

Contrary to the assertions at page 4 of the Massachusetts Attorney General's motion, Mr. Flynn's communication and legal advice to Mr. Peterson was intended to be and has been treated as confidential. Its basis was not public information but was instead confidential information obtained in the course of Mr. Flynn's representation of FEMA on Seabrook matters. Its subject was not the interpretation of existing agency regulations, but was instead legal advice provided for consideration in the formulation of agency policy and action. See Certificate of H. Joseph Flynn, attached.

FEMA's claim of privilege thus falls squarely within the ruling of the United States Court of Appeals for the District of Columbia Circuit in Brinton v. Department of State, supra, in which the Court of Appeals sustained the ruling of the District Court that legal opinions of the State Department Office of Legal Adviser providing advice to the Secretary of State were protected from disclosure by the attorney/client and deliberative process privileges.

The two older District Court opinions cited as authority by the Massachusetts Attorney General are inapposite and unpersuasive. The case of Community Savings & Loan Ass'n v. Federal Home Loan Bank Board, 68 F.R.D. 378 (E.D. Wisc. 1975), involved an opinion of the Office of General Counsel based almost entirely on material in the public record, id. at 382, unlike the circumstances of this case. In any event, the rationale of this District Court appears to be inconsistent with the later and definitive ruling of the

Court of Appeals in Brinton v. Department of State, *supra*. Likewise, unlike the circumstances in this case, Congoleum Industries, Inc. v. GAF Corporation, 49 F.R.D. 82 (E.D. Pa. 1969), involved "documents represent[ing] a report of general corporate business decisions as opposed to legal advice based upon confidential information," *id.* at 86. Also, Congoleum Industries did not involve legal advice provided to a government agency for use in formulation of agency policy, and thus did not raise the issue of the deliberative process privilege.

The Massachusetts Attorney General also cites Wright and Miller, Federal Practice and Procedure, Sec. 2017 at 137 for the proposition that "[t]o the extent that the Flynn memo sets forth opinion or advice regarding the interpretation of FEMA's own regulations as to document retention, that memo cannot be construed as a privileged document." MAG Motion, p. 4. However, an examination of the cited portion of Wright and Miller reveals nothing that could support this proposition. Wright and Miller at this page states,

The privilege will be denied if the communications were made for a purpose other than facilitating the rendering of professional legal services to the client. In addition, the privilege does not extend to information and statements obtained by an attorney from public documents or from third persons.

The citation is thus simply inapposite to the proposition that the Massachusetts Attorney General claims this authority supports.

The memorandum of Attorney Flynn to Mr. Peterson is plainly exempt from disclosure, and the Board is respectfully requested to sustain FEMA's claim of privilege.

B. Richard W. Donovan's memorandum to Attorney Flynn

The Massachusetts Attorney General does not appear to deny that Mr. Donovan's memorandum to Attorney Flynn was a privileged attorney/client communication. Instead, the claim is made that Mr. Donovan waived his attorney/client privilege by responding to questions posed by the Massachusetts Attorney General at his deposition.

FEMA of course does not dispute the general proposition that the attorney/client privilege under particular circumstances can be subject to waiver by the holder of the privilege. However, the Attorney General's argument sweeps far too broadly beyond the law and the facts of the case as to the scope of any waiver Mr. Donovan may have made by voluntarily responding to the Attorney General's questions at his deposition.

One of the subjects inquired of by the Massachusetts Attorney General at Mr. Donovan's deposition of January 10, 1989, was Mr. Donovan's discarding of exercise evaluator materials and superseded drafts of FEMA's final report on the June 1988 Seabrook qualifying exercise. Mr. Donovan responded to questions regarding the substance of his consultations with Attorney Flynn prior to discarding the documents on September 7, 1988. However, he made clear that all the conversations with Attorney Flynn about which he was testifying occurred prior to approximately September 7, 1988.

Q (Mr. Traficonte): What I'm curious about is the several times that you testified to here. I had read that initially--to be completely candid with you, I had read that to mean that you had called Attorney Flynn perhaps in the morning and you had a consultation with him and perhaps on the afternoon of the same day you called again, that would be several times?

A (Mr. Donovan): No, it was a period over several months where I advised the Office of General Counsel that unless

directed to do otherwise, I was going to follow my normal process and once I felt that the report was out in final form and through all the appropriate channels, I was going to take action to discard the documents.

Q: Do you remember the date of the last conversation along those lines?

A: Between September 4th and 5th.

Q: And September 7 when you discarded?

A: Right.

Q: Did you say you did it on September 7th?

A: I started sometime after September 7th--

Q: After, okay. Did you want to complete--

A: No. I was just going to say it took greater than the capacity of the trash can so it took several days for the documents to disappear.

Deposition of Richard W. Donovan, January 10, 1989, pp. 161-62 [emphasis added].

The United States District Court for the Northern District of Illinois had occasion to consider virtually identical factual circumstances in Goldman, Sachs & Co. v. Blondis, 412 F.Supp. 286 (N.D. Ill. 1976). In that case, the defendant had appeared for deposition by plaintiff's counsel, and in response to questioning related the substance of a conversation he had with his attorney on a particular day regarding sale of stock. Later at trial the plaintiff sought to compel the testimony of defendant's attorney on subsequent conversations he had with the defendant regarding this stock. The Court refused to extend the effect of the defendant's waiver beyond the particular attorney/client conversation about which he had earlier testified, basing its holding upon the rationale underlying the attorney/client privilege.

Although a majority of the cases which treat the question of waiver involve the impact of testimonial conduct, it has been held that the attorney-client privilege may be waived by testimony of the client in an examination before trial. This does not mean, however, that voluntary disclosure of confidential information effectively waives the privilege as to all conversations, or the whole breadth of discussion which may have taken place. In deciding what must be disclosed because of the waiver resulting from partial disclosure, reference must be made to the objectives of the attorney-client privilege and the qualification.

* * * *

Based upon this disclosure, therefore, the court is of the view that the waiver must be construed as limited to that specific subject during that particular conversation. This narrow reading of the scope of the waiver will, in the court's judgment, promote the fairness which the partial disclosure qualification is designed to encourage while serving the compelling public policy considerations underlying the attorney-client privilege.

Therefore, Louis L. Dent, the former lawyer for defendant Blondis, may be asked questions concerning the conversation of December 5th to the extent that the conversation concerned the Bucyrus-Erie stock and not beyond. Additionally, he may be asked to confirm or deny that he had conversations regarding the Bucyrus-Erie stock with the defendant on the 6th, 7th, 8th, and 10th of December, 1973, but he may not be asked about the substance of those conversations.

Id. at 288 [emphasis added]

The cases cited by the Massachusetts Attorney General simply do not support their assertion of a global waiver of the attorney/client privilege in regard to attorney/client communications that occurred after the conversations with Mr. Flynn about which Mr. Donovan testified at his deposition. In Morrill v. Becton, Dickinson and Co., 564 F.Supp. 1099 (E.D. Mo. 1983), the District Court found the attorney/client privilege had been waived as to certain documents since the party's attorney had already testified about the subject matter of these same documents. No global waiver was found beyond the particular documents about which testimony had already occurred. Id., at 1109. In Smith v. Montgomery County, Md., 573 F.Supp. 604 (D. Md. 1983), the

District Court declined to grant immunity from suit to a county attorney sued with other county officials for civil rights violations, since the county officials had already publicly disclosed attorney/client communications from the defendant county attorney. The case has nothing to do with the issue of scope of waiver.

Nor is the Attorney General's claim aided by the misleading assertion that Attorney Flynn waived Mr. Donovan's attorney/client privilege. First of all, it is black-letter law that the attorney/client privilege belongs to the client and can only be waived by him. See 81 Am.Jur. 2d Sec. 223 et seq. Moreover, an examination of the transcript cited by the Attorney General for Mr. Flynn's purported waiver of Mr. Donovan's attorney/client privilege demonstrates that Mr. Flynn was responding to an interruption and inquiry by Mr. Traficonte in the course of the deposition and was merely making clear the nature of his remarks as to a particular question posed to Mr. Donovan.

Q (Mr. Traficonte): Your testimony here mentioned that you consulted with the Office of General Counsel several times, was it on different days?

A (Mr. Donovan): Several times over a period of months.

Q (Mr. Traficonte): Over a period of months?

MR. FLYNN: If you don't mind--

MR. TRAFICONTE: Before we--you're not claiming attorney/client?

MR. FLYNN: No. The point I was about to raise is my own recollection is that I raised the issue in the first instance at the time of the exercise, so if you are asking him why he brought the subject up, your premise may be incorrect.

Deposition of Richard W. Donovan, January 10, 1989, pp. 155-56.

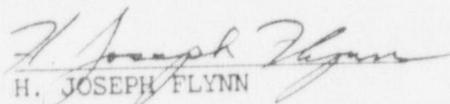
It is thus clear that Mr. Flynn's response to Mr. Traficonte's interruption and inquiry was not a global waiver of Mr. Donovan's attorney/client privilege as to communications made after the conversations about which he testified at this deposition.

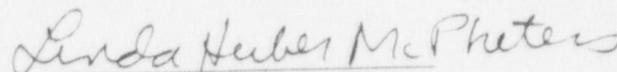
The Board is respectfully requested to deny the Massachusetts Attorney General's request to compel disclosure of Mr. Donovan's December 16, 1988 memorandum to Attorney Flynn. It would not serve the interests protected by the attorney/client privilege or the Board's admonition to the parties to be forthcoming in discovery to penalize Mr. Donovan for his candid and forthcoming testimony at his deposition. Should the Court deem the subject area relevant, Mr. Donovan is of course prepared to testify at trial as to the conversations with Mr. Flynn, about which he testified at his deposition, which occurred prior to Mr. Donovan's discarding of the exercise report drafts and the exercise evaluator materials.

IV. CONCLUSION

FEMA has responded at length because it wanted to demonstrate to the Board that its decision to withhold certain documents from production based upon careful consideration, and that there is substantial factual legal basis for its assertion of the deliberative process privilege and the attorney/client privileges as to these particular documents. The Board is thus respectfully requested to deny the motion of the Massachusetts Attorney General to compel production of documents from FEMA.

Respectfully submitted,


H. JOSEPH FLYNN


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Federal Emergency Management Agency

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Boston, Massachusetts 02109

May 26, 1988

MEMORANDUM TO: Grant C. Peterson
Associate Director,
State and Local Programs and Support

FROM: Henry Vickers
Regional Director *Henry J. Vickers*

SUBJECT: Seabrook Exercise Exercise Impediments

We have reviewed the update revision #2 to the New Hampshire Radiological Energy Response Plan for Seabrook Station. We have reviewed the status of the 112 corrective actions that were specified in our exercise report for the February 1986 Seabrook Exercise. Based upon our assessment, there are four major issues that are unresolved after review in the revision to the State Plan and the status of corrective actions. Following are brief summaries of these issues:

- o Arrangements for continuous 24 hour operations (Rep Element A4):
We could not determine if adequate arrangements and provisions have been made for adequate and continuous staffing for the local risk and host governments. We did determine that inadequate arrangements exist for the State Department of Public Health Service with regard to providing 24 hour staffing for the 4 Reception Center (Decontamination function) and for the emergency work at decontamination center.
- o Concept of Operation for Protective Actions (Rep Element J9):
The state's accident assessment procedures and protective action decision making process and procedures are based on a municipality by municipality basis. The evacuation time estimates that are part of the protective action decision process are based upon the concept of Emergency Response Planning Areas (ERPA's). ERPA's represent groups of municipalities, and therefore the planning basis is inconsistent.
- o Monitoring Procedure (Rep Element J12):
Monitoring procedures for personnel are not in compliance with FEMA criteria.
- o Traffic Management Plan (Rep Element J10j):
The state did not submit the Traffic Management Manual for review. The revision to the State Plan removed all procedures related to the organizational responsibilities for establishing traffic control and access control points.

On March 31, our office forwarded a list 51 inadequacies to the State of New Hampshire. Following is a brief summary of the outstanding issues (reference our letter of 3/31)

<u>ISSUE#</u>	<u>ISSUE</u>	<u>COMMENT</u>
Section I, #4	Staffing	As mentioned above (staffing) adequacy of personnel resources for 24 hour operation could not be determined.
Section I, #8	Staffing/monitoring decontaminate	see above comment on staffing.
Section I, #9	Traffic Management	See above comments on Traffic Mgmt Plan.
Section I, #13	Tone Alert Radio	Tone alert radios have not been distributed.
Section I, #14	Portsmouth EOC: Staffing	see above comments on staffing.
Section II, #15	Seabrook: Traffic Mgmt	see above comments on Traffic Mgmt Plan
Section II, #21	Portsmouth: Traffic Mgmt	" "
Section III, #2	Traffic Mgmt: Local Police Depts	" "
Section III, #6	Personnel Monitoring	See above comments.
Section III, #7	Traffic Mgmt: State State Police	See above comments on Traffic Mgmt Plan.

Summary of Issues

Traffic Mgmt Plan: We have requested that the State provide us the Traffic Mgmt Plan for review. The State believes that the revised Traffic Mgmt Plan addresses our expressed concerns.

24hr Staffing: The State is aware of our concerns regarding 24hr staffing. We have requested the State to develop an interim proposal for 24hr staffing, demonstrate that proposal in the exercise, and develop appropriate arrangements & plan revisions following the exercise.

Personnel Monitoring Procedure: The State's revised plans & staffing arrangements are based upon the productivity standard of one person every 60 seconds versus the FEMA review criteria of one person every 90 seconds. The State has indicated that adequate number of monitors exist to meet the staffing requirement determined by FEMA's review standard. We will request a plan & procedure revision.

Concept of Operation: The State has decided on the concept of operation by municipalities for protective action versus the concept of emergency response planning areas for protective action. The Evacuation Time Study should be revised if the State's plans remain unchanged.

Despite these open issues, we believe that there are no impediments to the conduct of the exercise and FEMA's evaluation of the radiological preparedness plan of the State of New Hampshire for Seabrook Station. We will inform the State of our concerns and follow up our conversation with a written report as appropriate.

If you have any questions, please call Mr. Hayes, Mr. Donovan, or Mr. Dolan.

Information copy: Richard Strome, Director
Emergency Mgmt., State of N.H.