

6
April 17, 1980

Note to James P. Murray

TMI INVESTIGATION

You have inquired about the status of the IE post-Rogovin TMI investigation, and particularly about the questions posed by Henry Meyers of Congressman Udall's staff. As I indicated to you in our discussion on April 15, 1980, the main thrust of the investigation is aimed at the apparent failure of TMI personnel to report:

1. the calculated exposure rate of 40 rem/hr at Goldsboro,
2. the high incore/exit temperatures, and
3. the containment pressure spike.

(Memo: Stello to Moseley, April 1, 1980)

The investigation was prompted by letters from Congressman Udall dated January 21, February 4, and March 25, 1980, to Chairman Ahearne. The 34 questions submitted by Meyers in his April 3, 1980, draft are in addition to, and duplicates of, some of the questions presented in the Udall letters. On April 7, 1980, I met with John Craig of IE, who is Norm Moseley's task force coordinator. I was informed that IE did not intend to answer the various questions one by one, but would prepare a comprehensive report covering all of the points raised.

This approach is being used because of a certain amount of confusion surrounding this investigation, created primarily by Meyers' draft questions. The Udall letters themselves pose factual questions aimed at discovering (1) whether the instrument indications at TMI did or should have alerted the operators to the seriousness of the accident and (2) if the actual situation was known, whether they withheld this information from the NRC. The legal points raised concern only the obligation to make reports. This is consistent with Udall's statements made in the letters and to the press, e.g., as reported in the Baltimore Sun article of April 3, 1980.

Meyers, on the other hand, has made a number of factual/legal inquiries, most of which pertain to in-plant monitoring and procedural requirements, rather than reporting obligations. These questions cannot be answered by a reading of NRC regulations alone. 10 CFR 50.36 requires incorporation of technical specifications in the license. Tech spec. 6.8 requires that procedures be established, implemented and maintained covering identified activities. Therefore, with the exception of reports to NRC, a detailed reading of the TMI procedures will be necessary to answer the bulk of Meyers' questions. A meeting has been scheduled with IE for April 21, 1980 to discuss inter alia these matters.

8507230116 850506
PDR FOIA
DOROSHOB4-311 PDR

6

However, insofar as potential violations of NRC reporting requirements are concerned, some initial observations from a legal viewpoint are in order. The bottom line is, of course, whether the failure of TMI personnel to inform the NRC of various conditions at the plant constituted actions for which sanctions may be imposed.

The apparent initiating factor in this investigation was the proposed civil penalties for failure to report. These were dropped after consultation with the Commission last October, but the intention at the time was to consider their reinstatement after publication and study of the Kemeny and Rogovin reports. As proposed the deleted items of noncompliance read:

12. 10 CFR 20.403(a) requires immediate notification of any incident involving by product, source, or special nuclear material possessed by NRC licensees which may have caused or threatens to cause:
 - The release of radioactive material in concentrations which, if averaged over 24 hours, would exceed 5,000 times the limits in Appendix B, Table II; or
 - Damage to property in excess of \$200,000.

Contrary to the above:

- A. On March 28, 1979, the required notification was not made following calculations of projected dose rates in Goldsboro at 7:10 a.m., estimated to be in the 10 - 40 R/hr range, indicative of a threat to cause a release of radioactive materials in concentrations which, if averaged over 24 hours, would exceed 5,000 times the limits in Appendix B, Table II.
- B. On March 28, 1979, the required notification was not made following a pressure spike of 28 psig which occurred in the reactor containment building at 1:50 p.m. on March 28, 1979, which threatened to cause property damage involving radioactive materials in excess of \$200,000, and NRC was not immediately notified. (Although this pressure spike was reported to NRC in the morning of March 30, 1979, immediate notification to NRC was essential for assessment of the potential for failure of the reactor containment building with concomitant gross fission product release by this event or subsequent similar energy releases.)
- C. On March 28, 1979, the required notification was not made following knowledge of fuel effluent temperatures in excess of 700°F in conjunction with the release of significant quantities of fission products from the damaged core with the threat to cause

a release of radioactive materials in concentrations which, if averaged over 24 hours, would exceed 5,000 times the limits in Appendix B, Table II, were not immediately reported to NRC. (This information was not available to NRC until the evening of March 28, 1979, and was obtained at that time by an onsite NRC inspector.)

This is an infraction. (Civil Penalty \$4,000)

Discussions with Jim Lieberman and an independent verification of NRC regulations and regulatory guides indicate the rationale for using section 20.403(a). It was the only requirement imposing a duty of "immediate notification". Within the context of Part 20, however, this section appears not to have been intended to cover radiological releases subsequent to a core melt. Also, the concept of an "incident" would seem not to include conditions from which an incident might be inferred.

Pending further discussions with the IE task force, which is now engaged in a careful review of the events of March 28, 1979, I view the immediate mission of OELD to develop a legal enforcement structure based on a knowing and willful withholding of information.



Richard G. Bachmann
Attorney
Rulemaking and Enforcement Division