



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
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MAR 6 1985

MEMORANDUM FOR: Clemens J. Heltemes, Jr., Director  
Office of Analysis and Evaluation  
of Operational Data

FROM: Guy H. Cunningham, III  
Executive Legal Director

SUBJECT: STUDY OF THE NEED FOR AN INDEPENDENT AGENCY TO  
INVESTIGATE INCIDENTS AT NUCLEAR POWER PLANTS

This responds to your request for comments on the Brookhaven study.

Where one comes out on the issue of an independent safety organization seems to be a strong function of one's view of the basic role of the NRC and one's confidence in the fidelity and dedication with which that role is fulfilled. The spectrum of possibilities is comprised of a totally independent agency, on the one hand, the current AEOD reporting to the EDO, on the other, and an AEOD-like group reporting directly to the Commissioners which occupies the middle ground. The study comes down in the middle although it concedes that "many of the improvements identified as needed by this study could be implemented by the present organization." BNL report, p. 172. The reasons assigned for the recommendation which the study makes are these:

- the new organization would "implement the improvements" identified as needed by the study,
- it would "increase public confidence" in the regulation of operating nuclear plants, and
- it would "minimize the potential conflict of interest of NRC" which arises from NRC having to investigate and determine the cause of an event "to which its own regulatory or compliance activities may have contributed." BNL study, p. 173-4.

Upon scrutiny it can be seen that the first reason isn't unique to the study's recommendation - any of the three forms of organization could implement the identified improvements. And, the second reason really flows from the third reason. Thus, it appears that conflict of interest considerations are really driving the recommendations to change the organizational set up we now have. Moreover, this is the case despite the somewhat enigmatic statement in the study that:

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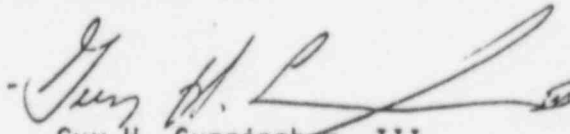
- "It is acknowledged that this recommendation is based upon a perception of a potential conflict of interest rather than on any actual evidence of a conflict of interest." BNL study, p. 174.

According to the study the "potential conflict of interest" arises from NRC "having to investigate and determine the cause of an event to which its own regulatory and compliance activities might have been contributing factors. Ibid. However, the study does not disclose how changing AEOD from a staff group to one reporting directly to the Commission resolves this "potential conflict of interest." It simply asserts that this organizational change "would minimize the potential conflict of interest." Id. It is unclear how this would come about since the Commission is responsible for all of "its own regulatory or compliance activities" which might have contributed to an event.

If the NRC staff cannot be trusted to carry out a safety investigation with fidelity because of the sort of conflict of interest envisioned by this study, I would suggest it be disbanded. In the last analysis we get down to the integrity of individuals and I simply don't share the apparently widespread cynicism abroad in the land today that unless it is made organizationally difficult (no organization could make it impossible) to breach one's duty we can just assume that it will occur.

The "legal aspects" of the study - Appendices A & B - make up over 40% of its heft. Appendix A, 85 pages, is totally devoted to the question of legislative authority for a completely independent agency, a recommendation which was not adopted. Appendix A's very existence is, therefore, strange and it gives the study a distorted and padded quality.

Appendix B, which addresses the recommendation which was adopted concludes at its outset that "additional legislation is not needed" to carry out the idea of having an AEOD-like organization report directly to the Commission. App. B, p. 5. It then examines the legislative foundation for a number of the functions the recommended organization might perform and concludes that except for the power to obtain medical and autopsy records and to preclude the use of accident investigation reports as evidence in judicial proceedings, NRC already possesses the requisite authority. Unlike Appendix A, Appendix B could be of some marginal use.

  
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