



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

January 24, 1985

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1/24/85

MEMORANDUM FOR: Commissioner James K. Asselstine

FROM: Carlton Kammerer, Director
Office of Congressional Affairs

SUBJECT: RESOURCES FOR THE OFFICE OF INVESTIGATIONS

Your memorandum dated January 17, 1985 asked that we provide a legislative history on the Congressional ceiling of 38 positions for the Office of Investigations (OI). This review is provided in response to your request.

As you are aware, the Commission advised our three authorization and two appropriations subcommittees in Congress of its intention to consolidate agency investigative functions in a new Office of Investigations by letter from Chairman Palladino, dated June 10, 1982 (Attachment A). The Chairman's letter was transmitted during FY 1982 after the NRC's FY 1983 budget had been submitted.

The Commission's FY 1982 budget did not include a separate category for investigations. Resources for enforcement, investigations and special programs (including emergency preparedness activities) were identified as a subcategory of the budget for the Office of Inspection and Enforcement. In the FY 1982 budget submission, the request for this category was for 140 personnel. In the FY 1983 budget submission already before Congress, emergency preparedness activities were identified separately so that personnel requirements for enforcement, investigations and special programs were estimated to be at 107 people for both FY 1982 and FY 1983.

The Chairman's June 10, 1982 letter did not specify the number of positions having investigative functions within this subcategory of OIE. It simply stated that present NRC investigative personnel were being transferred into the new office and that additional trained personnel would be hired "within NRC's current personnel ceiling." However, a subsequent letter from Chairman Palladino mentions a "total staff limit of 38 positions distributed among both headquarters and field offices" and this number was previously communicated to the Congressional oversight committees by OCA in response to inquiries.

The House Appropriations Subcommittee on Energy and Water Development responded to the Chairman's advisory letter with a letter, dated June 21, 1982 and signed by both Chairman Bevill and Ranking Minority Member John Myers. The Bevill/Myers letter (Attachment B) acknowledges receipt of the June 10, 1982 letter and states the Subcommittee's view that "staffing levels and budgetary resources for this new office, in excess of levels

previously provided for by the Committee, should be submitted for Committee review through the usual reprogramming procedures."

The Congress did not pass an Energy and Water Development Appropriation for FY 1983. During the fiscal year, the NRC and other affected agencies operated at FY 1982 levels under Continuing Resolution. In January 1983, the NRC submitted its budget request for FY 1984. That budget submission was the first to identify resources for investigations (or OI) as a separate item under Program Technical Support rather than under Inspection and Enforcement Programs.

The FY 1984 request estimated 38 people for OI in FY 1984 and again in FY 1985. The FY 1984 budget justification (Green Book) provided a brief description of OI and indicated that all estimates of people were stated in terms of full-time equivalents (FTEs).

The House Appropriations Committee report on the FY 1984 Energy and Water Development Appropriation Bill (H.Rept. 98-217) made no mention of staffing requirements for OI. It did, however, contain the following language relating to the investigations program:

"The Committee is concerned with the relationship between the Office of Inspection and Enforcement and the recently established Office of Investigations. The Committee is not convinced that there is any need for a separate Office of Investigations and whether the existence of that separate office in fact is consistent with an integrated investigation and enforcement program.

"The Committee has been advised that the Office of Investigations has not made public their policies and procedures. The Committee directs the NRC to make a report to the Committee regarding the interrelationship of these offices and what legal problems exist that might prevent the publishing of the policies and procedures of the Office of Investigations."

On June 16, 1983, subsequent to the issuance of the House Appropriations Committee report on May 24, 1983, Chairman Palladino wrote to the Subcommittee. His letter (Attachment C) advised that after a year of experience with the new OI, the Commission had concluded that an additional eleven (11) full-time employee positions should be allocated to OI. The following justification was provided in the letter:

"The number of allegations requiring NRC investigation is substantial and growing. All of them need at least a screening investigation. Our inability to complete investigations in a timely manner may result in a reduction in the level of public safety, licensing delay or both. Such delay is imminent in several complex cases before the Commission."

The Chairman's June 16, 1983 letter stated that the proposed reprogramming action would come "from within the overall personnel levels already provided for the NRC for FY 1983" and requested early and favorable consideration of the Commission's request. Not long after the Chairman's letter was sent, OCA was asked to advise the Subcommittee that the Commission was reducing the requested number of positions to be reprogrammed from eleven to six. This was communicated orally to the Subcommittee staff by OCA.

The Subcommittee never provided a written response to the Commission's request and the reprogramming was never implemented. The Congress enacted the FY 1984 Energy and Water Development Appropriation and the assumption on the part of both agency and Subcommittee was that a reprogramming action was required to increase the level of personnel for OI above the FY 1982 level, continued in FY 1983 by Continuing Resolution and requested by the NRC in its budget submission for FY 1984.

Throughout the remainder of FY 1983 and much of FY 1984, Subcommittee staff repeatedly expressed the desire to receive the NRC report on OI called for in the Committee's May 24, 1983 report before taking any action on the Commission's reprogramming request. The called-for report on OI's interrelationship with OIE and what legal problems might prevent publication of OI policies and procedures was not submitted to the Subcommittee until March 14, 1984 -- eight days before its hearing on the NRC's FY 1985 budget request.

The Commission's budget submission for FY 1985 included a summary of estimates for Program Technical Support Programs by function which stated an actual figure for FY 1983 for OI of 36 people, an estimate for FY 1984 of 44 people (presumably reflecting expected acceptance of the Commission's pending reprogramming request for an increase of six people) and an estimate of 49 people for OI for FY 1985. The Chairman's statement made no mention of special needs for OI and the related text in the FY 1985 Green Book was cursory: "Increases in staffing reflect greater emphasis placed on Investigations..."

In conjunction with the Subcommittee's hearing on the agency's budget submission, the Subcommittee asked a number of questions relating to OI. These included a question about whether the Commission planned to move OI under the direction of the Executive Director for Operations. However, there were no questions relating to staffing requirements for the office.

Although both the House Committee bill and the appropriation finally enacted substantially reduced the agency's overall budget request, no specific language was included in either House or Senate Committee report or in the Conference Report that would specifically limit the number of people assigned to OI.

However, on November 7, 1984, the Commission transmitted the agency's initial FY 1985 Base Table (Attachment D) to the House Appropriations Subcommittee and other Congressional oversight subcommittees. The Base Table transmitted to Congress shows adjustments and reductions made in the

budget as originally submitted by the President and serves as the benchmark for determining reprogramming actions under Reprogramming Procedures previously supplied by the House Appropriations Subcommittee (Attachment E). Footnote 1 to the Base Table describes FTE reallocations including increases and reductions in various programs and "no increase in the number of investigators."

It should be noted that, with respect to the position allocation for OI, the Base Table simply reflects the Commission's budget as submitted to the Office of Management and Budget (and soon to be submitted to Congress by the President), which estimates 38 FTEs in both FY 1985 and FY 1986.

If the Commission wishes to revise this number for OI, it would be advisable to do so before the budget hearing cycle begins and to identify clearly the need for a staffing increase for OI in its budget presentations. In particular, the Commission needs to address the points made in the original reprogramming request of June 1983 in light of our additional experience over the last eighteen months. For example, since the reallocation of staff was not permitted, is there any evidence of either licensing delay or a reduction in the level of public safety as a result?

Last year's House Appropriations Committee report made several references which could be construed as relating to OI and its staffing requirements. These ought to be taken into account in any Commission justification for further personnel for OI.

First, the Committee expressed support for Chairman Palladino's suggestion that NRC develop a policy for handling last minute allegations with a high threshold for the introduction of new allegations, for example, "supported by signed affidavits, and presented in a disciplined way." One effect of such a policy would presumably be to reduce demands on the resources of OI.

Second, the Committee repeated previous "concerns over the NRC establishing duplicative and redundant staffs" noting that "Commission level staff, as opposed to the Agency staff, has now grown to 261 positions." The House report directed NRC "to take immediate action to review this situation and take steps to streamline and improve the management process" stating, without recommending specific manpower ceiling reductions, its expectation that the NRC would implement reductions to Commission level staff prior to submission of the FY 1986 budget. Previous Committee comments have expressed concern about the overlapping duties of OGC and ELD. During the budget hearing, the Subcommittee asked about whether the Commission still planned to put OI under the direction of EDO, about the training OI investigators may have had in nuclear safety or nuclear operations, and about steps NRC had taken to assure the safety significance of any violation uncovered by OI. Taken together with the Committee's previous request for a study of the interrelationship between OI and OIE, these questions reflect a continuing uneasiness on the part of the Committee about the apparent isolation of the OI investigative staff currently reporting to the Commission from NRC's inspection and enforcement activities under the supervision of the EDO.

- 2 -

cc: Chairman Fallacino
Commissioner Roberts
Commissioner Bernthal
Commissioner Zech
OGC
OPE
EDO
OI
SECY



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20585

June 10, 1982

The Honorable Mark Hatfield, Chairman
Subcommittee on Energy and
Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In an effort to upgrade NRC's investigative capabilities, the Commission is taking steps to consolidate NRC's investigatory functions in a new Office of Investigations (OI). The new Office will, for the time being, report directly to the Commission and will be responsible for investigating all allegations of wrongdoing by individuals or organizations other than NRC employees or contractors. The Office will develop policy, procedures and quality control standards for the conduct of all OI investigations and will ensure that all OI investigators are properly trained.

Present NRC investigative personnel in the Office of Inspection and Enforcement and in the Regional Offices are being transferred to the new Office. It will be headed temporarily by Mr. James Fitzgerald, an Assistant General Counsel, until a permanent director can be hired. Additional trained personnel will be recruited for the new Office within NRC's current personnel ceiling.

The Commission believes that restructuring NRC investigative activities to provide a more centralized and high-level focus is urgently needed. Our plans essentially involve the reorganizing and upgrading of existing activities rather than an embarkation on any new programs or activities. We believe that our objectives can be accomplished within existing NRC funding and personnel levels for FY 1982.

We will, of course, continue to keep you apprised of significant Commission efforts in this and other areas of interest and importance.

Sincerely,

Hunzio J. Palladino
Hunzio J. Palladino

cc: ~~Sen. J. [unclear]~~