

January 25, 1988

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

SUPPLEMENTAL TESTIMONY OF DAVE McLOUGHLIN,
EDWARD A. THOMAS, AND WILLIAM R. CUMMING ON
BEHALF OF THE FEDERAL EMERGENCY MANAGEMENT
AGENCY ON SHELTERING/BEACH POPULATION ISSUES

I. Introduction.

The Federal Emergency Management Agency (FEMA) offers this testimony to supplement its earlier proposed testimony on Revised Town of Hampton Contention VIII to Revision 2, SAPL Contention 16, and NECNP Contention RERP-8 in order to reflect the use which FEMA has made of the advice given by the Regional Assistance Committee (RAC) and to clarify its reasons for adopting its position on the "Sheltering" or "Beach Population" issues. The Witnesses are Dave McLoughlin, Deputy Associate Director, State and Local Programs and Support Directorate, FEMA; Edward A. Thomas, Director, Natural and Technological Hazards Division, FEMA Region I; and William R. Cumming, Assistant General Counsel, Program Law Division, Office of General Counsel, FEMA. Statements of the professional qualifications of Dave McLoughlin and William R. Cumming are attached to this Supplemental Testimony.

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Briefly put, FEMA's position is (a) that it is appropriate to consider further the adequacy of the emergency response plan for the transient population of the beaches within the Seabrook Emergency Planning Zone (EPZ) during the summer, that is, from May 15 to September 15, as indicated in the New Hampshire Radiological Emergency Response Plan (NHRERP); (b) that the requirement of NUREG 0654/FEMA REP 1, Rev. 1, for a "range of protective actions" may or may not be satisfied by evacuation alone; (c) that FEMA cannot conclude that the NHRERP is adequate with respect to that beach population until it is clear that the State of New Hampshire has considered the use of sheltering for the transient beach population and explains what use, if any, it intends to make of sheltering. This latter point should not be interpreted to mean that FEMA has imposed a requirement that sheltering be available. If the State of New Hampshire intends not to employ sheltering for the transient beach population (which is not presently clear from the NHRERP), then FEMA expects the State to develop the rationale for such a choice and provide it to FEMA for review.

II. History of FEMA's Consideration of the Beach Population Issue.

FEMA's concern about the issue of protective measures for the summer beach population has a rather long history. On December 9, 1985, the State of New Hampshire submitted the New Hampshire Radiological Emergency Response Plan (NHRERP) which later became known as "Revision 0". On December 31, 1985, Edward A. Thomas, Chairman of the Region 1 Regional Assistance Committee, sent a memo to all of the members of the RAC asking for their comments on the beach population issue.

A full field exercise of Rev. 0 was conducted on February 26, 1986. A FEMA Exercise Report was issued in June, 1986. The State of New Hampshire submitted Revision 1 of the NHRERP on June 3, 1986, and a FEMA/RAC review of the plan was completed on June 24, 1986. Revision 2 of the NHRERP was submitted September 8, 1986; the FEMA/RAC Review was provided to the State of New Hampshire on December 12, 1986.

On February 18, 1987, Dr. Robert Bores, Technical Assistant, Division of Radiation Safety and Safeguards, NRC, King of Prussia, Pennsylvania, sent a letter to Edward A. Thomas, which expressed the views of the NRC as to the adequacy of the NHRERP with respect to the summer beach population. The issue of the beach population was discussed at length at the RAC meeting of April 15, 1987. At that meeting, the RAC reached a consensus that the issues identified in FEMA's memorandum of December 31, 1985, were resolved.

At the direction of the Atomic Safety Licensing Appeal Board, FEMA prepared a statement of its position on the contentions pending in this hearing to be filed by June 4, 1987. While that statement of position was in preparation, FEMA was advised that NRC was withdrawing Dr. Bores's letter and would substitute a different letter which omitted any reference to the containment structure at Seabrook Station. This second letter was delivered to FEMA on June 4, 1987. On that basis, FEMA took a position that it could not conclude that the plan was adequate with respect to the beach population. This change was the subject of extended discussion at the RAC meeting on July 30, 1987. FEMA continued to hold this position and incorporated it into its prefiled testimony of September, 1987.

In September, 1987, the proposed testimony of the Applicant included a number of documents, including a Shelter Survey which was offered as the basis

for potential changes in the NHRERP. The State of New Hampshire submitted these documents to FEMA for review by the RAC, and on September 30, 1987, advised FEMA that the Shelter Survey was not considered part of the NHRERP, but was submitted for the purpose of receiving technical assistance, as provided in 44 C.F.R. § 350.6. FEMA has requested comments from the RAC members, but only two agencies have responded to date, the NRC and the Department of Transportation.

At the meeting of January 7 and 8, 1988, a majority of the RAC members endorsed views contained in the June 4, 1987, letter from Dr. Bores. At the same time, those RAC members agreed that the NHRERP was currently adequate but would be enhanced by a development of a sheltering option for the transient beachgoers.

Since September, 1987, FEMA has been evaluating its prefiled testimony and the positions of the NRC and other RAC members. Dr. Bores's letter of June 4, 1987, expressed the view that the NHRERP is adequate with respect to the transient beach population and supports a finding of reasonable assurance that adequate protective measures can be taken to protect the public in the event of an accident at Seabrook Station. It also advances the position that the NHRERP does achieve significant dose savings for the transient beach population and that there are a number of special circumstances which work together to lessen the risk of injury. The June 4, 1987, letter from Dr. Bores, in combination with the June 18, 1986, letter from the Chief Hearing Counsel of the NRC Staff to the General Counsel of FEMA, the preamble to NRC's final rule on evaluation of utility sponsored emergency response plans (52 Fed. Reg. 42,078 (November 3, 1987)), and the rebuttal plan filed by the NRC in this hearing, persuades FEMA that the NRC interprets its own regulations not to require sheltering for all segments of the EPZ.

III. The Range of Protective Actions Issue.

At the RAC meeting of January 7 and 8, 1988, Dr. Bores, the NRC representative, expressed the view that the emergency planning guidance of NUREG 0654/FEMA REP 1, Rev. 1, applies to the entire spectrum of accidents, to the entire population of the EPZ, all of the time. It was the NRC's view that FEMA's position on the summer beach population was too narrowly focused. FEMA has considered that position, but has decided that it is appropriate to consider further the provisions in the NHRERP for the transient beachgoers.

In FEMA's view, as the Federal agency with specialized knowledge of emergency response planning, the NHRERP is not adequate with respect to the transient beach population because Planning Standards J.9. and J.10.m. of NUREG 0654/FEMA REP-1, REV. 1, (November 1980) have not been met.

Planning Standard J.9. states:

Each State and local organization shall establish a capability for implementing protective measures based upon protective action guides and other criteria. This shall be consistent with the recommendations of EPA regarding exposure from passage of radioactive airborne plumes, (EPA 520/1-75-001) and with those of DHEW (DHHS)/FDA regarding radioactive contamination of human food and animal feeds as published in Federal Register of December 15, 1978 (43 FR 58790).

Planning Standard J.10. states:

The organization's plans to implement protective measures for the plume exposure pathway shall include:

....

m. The bases for the choice of recommended protective actions from the plume exposure pathway during emergency conditions. This shall include expected local protection afforded in residential units or other shelter for direct and inhalation exposure as well as evacuation time estimates.

FEMA interprets these provisions as requiring consideration of more than a single protective measure.

FEMA notes that the NHRERP includes no explicit consideration of sheltering for the transient beach population. The Shelter Survey which the State of New Hampshire has submitted to FEMA for technical assistance may be interpreted as a preliminary step in the development of a plan for sheltering beachgoers, but the current plan considers only one protective measure for the transient beach population, namely evacuation. The guidance of NUREG 0654/FEMA REP 1, Rev. 1, contemplates that emergency responders will ordinarily be called upon to make an informed and reasoned choice among available protective measures. As it presently stands, the NHRERP provides neither an adequate description of how a sheltering option might be used nor a rationale for not having the option available for the transient beach population. For these reasons, FEMA concludes that Planning Standards J.9. and J.10.m. have not been met with respect to the transient beach population.

IV. The Reasonable Assurance Issue.

The overall question of whether FEMA is prepared to make a finding that there is reasonable assurance that adequate protective measures can be taken to protect the public in the event of an accident presents an entirely separate issue. FEMA employs the terms "Adequate" or "Inadequate" in the context of RAC reviews of emergency response plans to indicate whether specific planning elements of NUREG 0654/FEMA REP 1, Rev. 1, have been satisfied. FEMA does not make findings of reasonable assurance as to specific parts of a plan but rather for the plan as a whole. A single plan "Inadequacy" will not, by itself, automatically prompt a negative finding (that is, that the plan does not provide reasonable assurance). In contrast, FEMA's guidance defines exercise "Deficiencies" so that a single deficiency

precludes a finding of reasonable assurance. This distinction between exercise "Deficiencies" and plan "Inadequacies" is consistent with the Memorandum of Understanding between FEMA and the NRC.

FEMA interprets its regulations to mean that it must determine first whether radiological emergency response plans comply with NUREG 0654/FEMA REP 1, Rev. 1 (44 C.F.R. § 350.5(a)) and secondly whether 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" (44 C.F.R. § 350.5(b)). In FEMA's view, a finding or determination that State and local plans provide reasonable assurance is a matter of professional judgment. In this case, FEMA's decision not to make an overall finding of reasonable assurance stems from the many "Inadequacies" identified in the RAC Review of the plan and "Deficiencies" identified in the Exercise Report and not just the lack of explicit consideration in the NHRERP of the possibility of sheltering for the transient beach population.

V. The Dose Savings Issue.

While FEMA and the RAC have not completed the technical assistance review of the Shelter Survey requested by the State of New Hampshire, the Survey does not provide the details FEMA would expect to find in a plan. The discussion of the planning basis in NUREG 0654/FEMA REP 1, Rev. 1, establishes that the objective of emergency response planning is dose savings although it does not call for specific quantitative levels of protection to be achieved. It seems to be generally accepted that the plan, however judged, ought to take advantage of every readily available opportunity to reduce dose. Therefore, the State of New Hampshire should fully consider whether there might be opportunities for additional dose savings through sheltering of the transient beach population.

FEMA's Supplemental Testimony
on Shelter Issues, page 7.



Federal Emergency Management Agency

Washington, D.C. 20472

BIOGRAPHICAL SKETCH

David McLoughlin

Dave McLoughlin is the Deputy Associate Director for State and Local Programs and Support of the Federal Emergency Management Agency (FEMA). This office administers FEMA emergency planning, preparedness and response programs impacting on State and local governments.

Mr. McLoughlin joined the Federal Government in 1957 as an instructor in the Federal Civil Defense Administration's Chemical/Biological/Radiological Defense School at Battle Creek, Michigan. In 1962, he became Director of the Special Training Department of the Office of Civil Defense Staff College. He was named Deputy Director, Region IV, of the Defense Civil Preparedness Agency in Battle Creek in 1971.

From 1976 to 1979 he served as planning staff supervisor on terrorism for the Federal Preparedness Agency, in Washington, D.C. Mr. McLoughlin was appointed as FEMA Assistant Director of Training and Education in 1979, and subsequently served as the Director of the Office of Emergency Operations within State and Local Programs before being named Deputy Associate Director.

Mr. McLoughlin's service includes participation in two National Security Council studies related to the role of civil preparedness in U.S. strategic posture. He was also selected to be a member of the Presidential Reorganization Project which resulted in the creation of the Federal Emergency Management Agency.

In 1986, Mr. McLoughlin was honored as a recipient of the President's Meritorious Rank Award.

Graduated with a Bachelor of Science degree from the University of Illinois, he received his Master of Arts and Doctor of Education degrees from Western Michigan University.

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EMPLOYMENT HISTORY

August 1982 to Present	ES-05	Deputy Associate Director State and Local Programs and Support Directorate Federal Emergency Management Agency Washington, D.C.
August 1981 to August 1982	ES-04	Director, Office of Emergency Coordination Federal Emergency Management Agency Washington, D.C.
July 1979 to August 1981	ES-03	Assistant Director Training and Education Federal Emergency Management Agency Washington, D.C.
August 1976 to July 1979	ES-03	Planning Group Leader Federal Preparedness Agency General Services Administration Washington, D.C.
October 1971 to August 1976	GS-15	Deputy Regional Director Defense Civil Preparedness Agency Battle Creek, Michigan
May 1962 to October 1971	GS-14	Director, Special Training Dept. Office of Civil Defense Staff College Battle Creek, Michigan
June 1957 to May 1962	GS-7/13	Senior Instructor FCDA CBR Defense School Battle Creek, Michigan

WILLIAM R. CUMMING

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Arlington, Virginia 22207
(703) 527-3919

PROFESSIONAL QUALIFICATIONS

Offer over fifteen years experience in a series of increasingly significant public policy positions where legal/administrative knowledge was used to achieve priority management objectives. Areas of expertise include:

Legal Administration — History of success in coordinating difficult policy and legal issues . . . expert in developing systems and procedures for detecting and controlling fraud and abuse of governmental programs . . . experienced in developing legal frameworks for new programs and decentralizing activities.

Management/Administration — Successful in undertaking many new, understaffed, mission-oriented assignments and achieving management objectives in both civilian and military settings . . . broad background in program development . . . knowledge of contracting and procurement law . . . skilled in handling debarment and suspension of contractors and program participants.

Personnel Supervision — Supervised groups ranging from 5 to 130 . . . experienced in designing training and program materials . . . skilled in handling employee and union relations . . . successful in developing program alternatives to conserve personnel resources . . . effective at motivating staff members to deliver maximum performance levels.

PROFESSIONAL EXPERIENCE

OFFICE OF THE GENERAL COUNSEL FEDERAL EMERGENCY MANAGEMENT AGENCY

1979 to Present

Assistant General Counsel (Projects) (1986 to Present)

Responsible for development of legal positions related to planning, preparedness response and mitigation for both peacetime and wartime civil emergencies and integration into existing National Security institutions.

- Coordinate Technical Assistance to the Associate General Counsel for Litigation, General Law, Insurance and Mitigation; the Assistant General Counsel and the Regional Counsel.
- Conceive and implement legal policies and procedures related to warning systems, communications, population relocation, protection and damage assessment to be utilized during disasters and National Security Emergencies.
- Coordinate legal plans to assure continuity of the Federal Civil Government in a wide range of National Security Emergencies.
- Develop legal plans for the protection of industry, post-attack recovery and economic stabilization during National Security Emergencies and disasters.
- Develop legal authorities for emergency evacuation and sheltering decisions.
- Senior attorney responsible for legal aspects of agency telecommunications policies, including AT&T consent order impact on National Security Emergencies.
- Provide legal advice and technical support to State and Local governments, on emergency preparedness.
- Develop legal systems to prevent fraud, waste and abuse in programs.

Associate General Counsel (Litigation) (1980 to 1985)

Supervised all attorneys performing litigation services for the Director and General Counsel of the Federal Emergency Management Agency.

- Supervised an average open caseload of 300 defensive and affirmative cases in various state and federal trial and appellate courts; savings to government exceeded \$85 million.
- Established and coordinated Regional Counsels.
- Determined trial and appellate recommendations and strategy for FEMA; coordinated with Department of Justice on cases having government wide impact.

PROFESSIONAL EXPERIENCE . . . *Continued***Assistant General Counsel (Insurance) (1979 to 1980)**

Provided legal advice to the Federal Insurance Administration (FEMA) including responsibility for preparation and sign-off of legal opinions, regulations and conduct of litigation; defended over 700 claims with many individual cases exceeding \$5 million in potential liability.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

1974 to 1979

**Attorney-Advisor, Supervisory Trial Attorney
Office of the Associate General Counsel for Regulatory Programs**

Supervised six attorneys; prepared all appropriate pleadings, motions and appellate briefs in cases related to HUD programs in federal trial and appellate courts. Reviewed, drafted and commented on legislation.

INTERNAL REVENUE SERVICE

1970 to 1974

**Senior Tax Law Specialist (Projects Section)
Estate and Gift Tax Branch (1973 to 1974)**

Prepared numerous private and published revenue rulings which determined IRS position concerning income, estate, gift and fiduciary returns.

Special Advisor to the Assistant Commissioner (Stabilization) 1972

Developed regulations of the Pay Board, Price Commission and Rent Advisory Board; served as the Assistant Commissioner's liaison with these organizations on enforcement issues.

Tax Law Specialist, Various Branches under Assistant Commissioner (Technical) (1970 to 1971)

EDUCATION

Juris Doctor, 1967
University of Virginia

Bachelor of Arts, History, Magna Cum Laude, 1964
Lehigh University

MILITARY

United States Army, 1967 to 1970; Commissioned 1968
1LT Field Artillery Highest Rank
Nuclear Weapons Unit Commander 1968 to 1969
Staff Officer, Intelligence and Operations 1969 to 1970
Overseas Service, Federal Republic of West Germany
Decorations: Army Commendation Medal

LEGAL

Admitted to Virginia State Bar; admitted to practice before the Virginia Supreme Court and United States Tax Court.

References Available Upon Request

DOCKETED
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

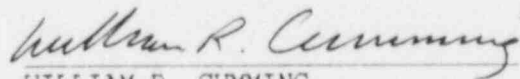
50-444-OL

Offsite Emergency

Planning Issues

WITHDRAWAL OF APPEARANCE OF WILLIAM R. CUMMING
ON BEHALF OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY

Having been identified as a witness on behalf of the Federal Emergency
Management Agency (FEMA), I, William R. Cumming, hereby withdraw my appearance
as counsel for FEMA.


WILLIAM R. CUMMING

Dated: January 25, 1988
at Washington, D.C.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

'88 JAN 26 P2:52

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

Public Service Co. of New Hampshire,)
et al.)

(Seabrook Station, Units 1 & 2))
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Docket No. 50-443-OL

50-444-OL

Offsite Emergency

Planning Issues

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Supplemental Testimony, Motion for Leave to File Supplemental Testimony Out of Time, and Withdrawal of Appearance have been served on the following by Federal Express courier service on this 25th day of January, 1988.

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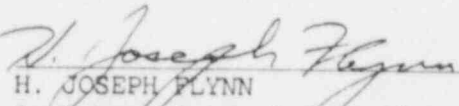
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