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7/18/75

The Honorable Abraham A. Ribicoff  
Chairman, Committee on Government Operations  
United States Senate

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Dear Mr. Chairman:

1 [Organization of the Nuclear Regulatory Commission was being established in compliance with the Energy Reorganization Act of 1974] end  
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and Development Administration gave the Energy Research  
independence the act intended. This letter concerns the  
Commission's organizational structure. Because the inter-  
agency agreements keep changing, we will periodically brief  
you and/or your staff on their development and report to  
you when they are final. 66

The Energy Reorganization Act of 1974 (Public Law  
93-436) specifically provided for three essential program  
offices in the Commission: the Office of Nuclear Reactor  
regulation, the Office of Nuclear Material Safety and Safeguards,  
and the Office of Nuclear Regulatory Research (50  
U.S.C. 5642-5643). Each office is required to be headed  
by a director appointed by the Commission, and each director  
may report directly to the Commission. Each director is  
removable by the Commission, and certain functions and  
responsibilities of each director are specified in the  
sections of the act establishing each office. The functions  
and responsibilities of the Office of Nuclear Reactor Regu-  
lation and the Office of Nuclear Material Safety and Safeguards  
are those material to this discussion (sections 203  
and 204 of the act, respectively).

The Commission established a transitional organizational  
structure on January 19, 1975. The Commission established,  
in addition to the statutory program offices, two other pro-  
gram offices--the Office of Standards Development and the  
Office of Inspection and Enforcement. The former prepares  
regulatory standards for use in connection with the work of  
the Office of Nuclear Reactor Regulation and the Office of  
Nuclear Material Safety and Safeguards; the latter, with  
five regional offices, carries out inspection and enforce-  
ment activities for these two statutory offices. Further de-

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Office of Standards Development nor the Office of Inspection and Enforcement is supervised by, or reports to, either the Office of Nuclear Reactor Regulation or the Office of Nuclear Material Safety and Safeguards. Instead, all five program offices--the three statutory ones and the two Commission-created ones--report to the Executive Director for Operations, the chief operating officer for the Commission.

In July 1975 the Commission was considering a final organizational structure with the same five program offices. (See enclosure.)

IS THE COMMISSION ORGANIZED  
IN ACCORDANCE WITH THE 1974 ACT.

In accordance with sections 203 and 204 of the act, the Director of the Office of Nuclear Reactor Regulation and the Director of the Office of Nuclear Material Safety and Safeguards are to "perform such functions as the Commission shall delegate including" the general functions enumerated in these sections. The language of the act clearly gives the Commission discretion to assign specific duties within the general functions to the statutory officers, and by implication, other duties within those general areas to program offices outside the statutory offices. Moreover, nothing in the act purports to preclude the Commission from choosing to create offices within its structure that are additional to those mandated by the statute, provided of course that the statutory offices are not deprived of their basic authorities and responsibilities. This interpretation is supported by the explanation in the legislative history of the act, principally the conference committee report, showing that the conferees and the Congress did not adopt specific language of the Senate version and its report, S. 2744 (the Senate version of the act) would have required that the functions of standards development, licensing, and inspection and enforcement involving nuclear safeguards be unified in the Bureau of Nuclear Materials Security under the supervision of a director and that such functions involving nuclear safety be unified under the supervision of the Director of Nuclear Reactor Safety.

Section 204 of S. 2744 would have created the Bureau of Nuclear Materials Security. Section 204(b) read, in part, that:

"(b) Subject to the provisions of this Act, the

Director of Nuclear Materials Security shall -

(1) recommend regulations relating to safeguards against thefts, thefts, and sabotage involving special nuclear materials, high-level radioactive wastes, and nuclear facilities resulting from all activities licensed under the Atomic Energy Act of 1954, as amended;

(2) enforce such regulations which are promulgated by the Commission \* \* \*."

The function of recommending regulations would have included standards development, and the function of enforcing such regulations would have included investigation.

In its report on S. 2744 (S. Rept. 93-980), the Senate Committee on Government Operations gave the following statements pertinent to standards development, licensing, and inspection and enforcement.

"This subsection [subsection 204(a)], which would have established the Bureau of Nuclear Materials Security is intended to clearly establish the authority of the Director as the chief officer responsible for carrying out all the safeguards responsibilities and directives on behalf of the Commission, including regulations, licensing, inspections, and enforcement." (underline supplied.)

Section 208(a) of S. 2744 would have created the Office of the Director of Nuclear Reactor Safety whose duties would have been those described in the Senate report as follows:

"\* \* \* the Director of Nuclear Reactor Safety will continue to supervise the existing directorates of regulations, licensing and enforcement as they pertain to the safety of nuclear powerplants and other facilities in the licensed industry." (underline supplied.)

The directorates of regulations, licensing, and enforcement referred, respectively, to the then Directorate of Regulatory Standards, responsible for standards development; the Directorate of Licensing, responsible for reviewing and approving license applications; and the Directorate of Regulatory Operations, responsible for inspection and

enforcement. Thus, under the Senate version of the act, the Director of Nuclear Reactor Safety would have supervised standards development, licensing, and inspection and enforcement.

The Senate report included an organization chart which showed a Directorate of Licensing, a Directorate of Standards, and a Directorate of Inspection and Enforcement--each within both the Bureau of Nuclear Materials Security and the Office of Nuclear Reactor Safety. These statutory offices, therefore, would have had their own separate staffs for standards development, licensing, and inspection and enforcement.

However, the conference report (S. Rept. 93-1252 and H. Rept. 93-1445) did not contain any specific organizational structure for standards development and for inspection and enforcement. The report did not specify that these functions be carried out by the two statutory offices (the Office of Nuclear Reactor Regulation and the Office of Nuclear Material Safety and Safeguards) nor did it mention these functions for possible assignment to the two statutory offices.

The conference and the Congress chose to give the Office of Nuclear Reactor Regulation and the Office of Nuclear Material Safety and Safeguards "perform such functions as the Commission shall delegate." Under the language of the act, the Commission may choose whether or not to assign particular functions to these statutory offices in the areas specified. This view is supported by the conference report.

"The conference substitute \* \* \* follows the Senate language with modifications in providing three co-equal administrative or operating units titled, respectively, the Office of Nuclear Reactor Regulation, the Office of Nuclear Material Safety and Safeguards, and the Office of Nuclear Regulatory Research \* \* \* Each \* \* \* will perform such functions as the Commission shall delegate in the areas specified in the Act and indicated by the titles of the respective units.

"Generally, the organizational arrangements contemplate that of the three above-named components, one component will be concerned with licensing and related regulatory activities within the boundaries of the nuclear reactor, and another with materials

and safeguards outside such boundaries, while the third will conduct and support research contributions to the needs and purposes of the other two and of the Commission as a whole.

"This arrangement will provide ample flexibility in the Commission to devise the best effective administrative arrangements within its own organization and at the same time give due and proper emphasis to functions which are vital to the public health and safety and the safe and efficient operation of nuclear powerplants and other licensed facilities.

"The conference substitute (section 209) follows the House language in providing for an Executive Director of Operations. The Act does not specify his functions, leaving the determination to the Commission's discretion and judgment. However, it is expected that the Executive Director for Operations will be the coordinating and directive agent below the Commission for the effective performance of the Commission's day-to-day operational and administrative activities. He will coordinate and direct in behalf of the Commission, the operating and administrative units.

"At the same time, the conference substitute provides that the head of each component provided in the conference substitute shall be able to communicate with and report directly to the Commission itself whenever he deems necessary to carry out his responsibilities. In this way, the conferees make it clear that the Executive Director for Operations will not be able to suppress or limit information needed for the Commission's discharge of its own collective responsibilities." (underlining supplied.)

The conference report states that generally one component would be concerned with licensing and related regulatory activities within the boundaries of the nuclear reactor and the other would be concerned with such activities outside such boundaries. We do not construe this paragraph to mean that these offices must necessarily carry out the functions of standards development and inspection and enforcement, in addition to licensing nuclear facilities and materials. It is clear that the term "related

regulatory activities" does not refer to the specific duties enumerated in S. 2744 and its Senate report because the conferees were substituting their version of the bill for the Senate version which included major changes in the responsibilities of the statutory offices. Apparently the term "related regulatory activities" serves to emphasize that these offices are to carry out regulatory functions other than licensing in its strictest sense. In any event, the conference report makes it clear that the conferees intentionally refrained from pinpointing "related regulatory activities."

The conferees' unwillingness to prescribe the exact "related regulatory activities" to be performed by the statutory offices is shown by the above-quoted portion of the conference report:

"Each [statutory office] will perform such functions as the Commission shall delegate in the areas specified in the Act and indicated by the titles of the respective units."

The areas specified in sections 203 and 204 of the act are very general functions or categories. The meaning of the above-quoted sentence is that the Commission is to select those definite functions the statutory offices shall and shall not perform within each such general area. Therefore, the Commission may choose to place certain specific functions outside the statutory offices. Further, as indicated below, the Office of Nuclear Reactor Regulation and the Office of Nuclear Material Safety and Safeguards have been delegated functions giving them substantial influence over standards development, and inspection and enforcement.

The differing approaches of the conference report, expressing flexibility in the assignment of duties to the statutory offices, and S. 2744 and its report, with definite assignment of standards development and inspection and enforcement activities, are substantive. The act does not prohibit the Commission from establishing organizational units separate from the statutory components. The discretion and flexibility afforded the Commission, and the absence of specific prohibitions, allow assigning standards development and inspection and enforcement activities to the Commission-created units.

COMMISSION VIEWS ON ITS  
ORGANIZATIONAL STRUCTURE

Commission officials told us that the identification of three major program offices in the act did not prevent the Commission from establishing additional program offices.

The Commission's Executive Legal Director told us that because there was no specific provision in the statute or its legislative history limiting the Commission to the three statutory offices, it was reasonable to assume that the Commission could have more than those three offices. He added that, whereas the functions delegated to the statutory offices including licensing and related regulatory activities, the term "related regulatory activities" did not necessarily mean standards development and inspection and enforcement. Thus these functions do not necessarily have to be carried out by the statutory offices.

The Executive Legal Director told us that the Commission had the flexibility to organize its program offices as long as the organization included the statutory offices. That the Commission was given this flexibility is evident from statements in the conference report.

Under the transitional organizational structure, the Office of Nuclear Reactor Regulation and the Office of Nuclear Material Safety and Safeguards carry out or greatly influence standards development, licensing, and inspection and enforcement activities.

Currently these two statutory offices directly carry out the licensing activity. In addition, through coordination with the Office of Standards Development and the Office of Inspection and Enforcement, they greatly influence how these offices carry out their responsibilities. Together, the two statutory offices review, as a condition for granting licenses and permits to applicants, the location and design of nuclear facilities, the specifications of plant construction and operation, and the management controls for using and handling nuclear materials. The licenses for these facilities and materials contain some of the criteria against which the Office of Inspection and Enforcement appraises the performance of applicants, licensees, and permit holders. Some of the criteria followed by the two statutory offices and the Office of Inspection and Enforcement are in the form of standards and guides

generated by the Office of Standards Development. The two statutory offices review and comment upon proposed standards and guides before the Commission adopts them.

A staff memorandum prepared in April 1975 for the Commission indicated that establishing a strict three-program office organization would hamper the effectiveness of the Commission's standards development and inspection and enforcement activities.

The standards development activity was made an independent unit at the time of the regulatory reorganization in 1972, because not enough attention had been given to developing standards. Under the previous organization, regulatory units were concerned primarily with licensing and any bottlenecks in the licensing process were alleviated by reducing efforts in developing standards. A Commission staff paper used in establishing the transitional organization indicated that placing the standards development activity under offices which were primarily responsible for licensing might again result in neglecting nuclear standards.

Before the regulatory reorganization, there was a Division of Compliance and a Division of Nuclear Materials Safeguards. The Division of Compliance inspected licensees on nuclear safety matters and reviewed licensee information on the receipt, transfer, and disposal of special nuclear material. The Division of Nuclear Materials Safeguards inspected the same licensees to preclude diversion of special nuclear material. The April 1975 memorandum indicated that the three-program office organization might again result in duplicate inspections. This memorandum noted that placing inspection and enforcement activities in each statutory organizational unit would:

- Lead to differences in carrying out a uniform enforcement program.
- Necessitate that overhead, both managerial and administrative, be duplicated.
- Cause conflicts between safety and safeguard issues. (Licensees could be inspected by two offices and each could recommend conflicting changes.)
- Eliminate a single point of contact with States

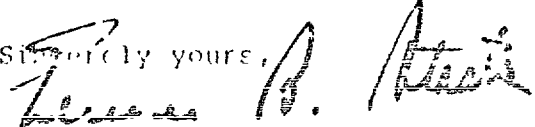


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and licensees and thus create confusion and misunderstanding.

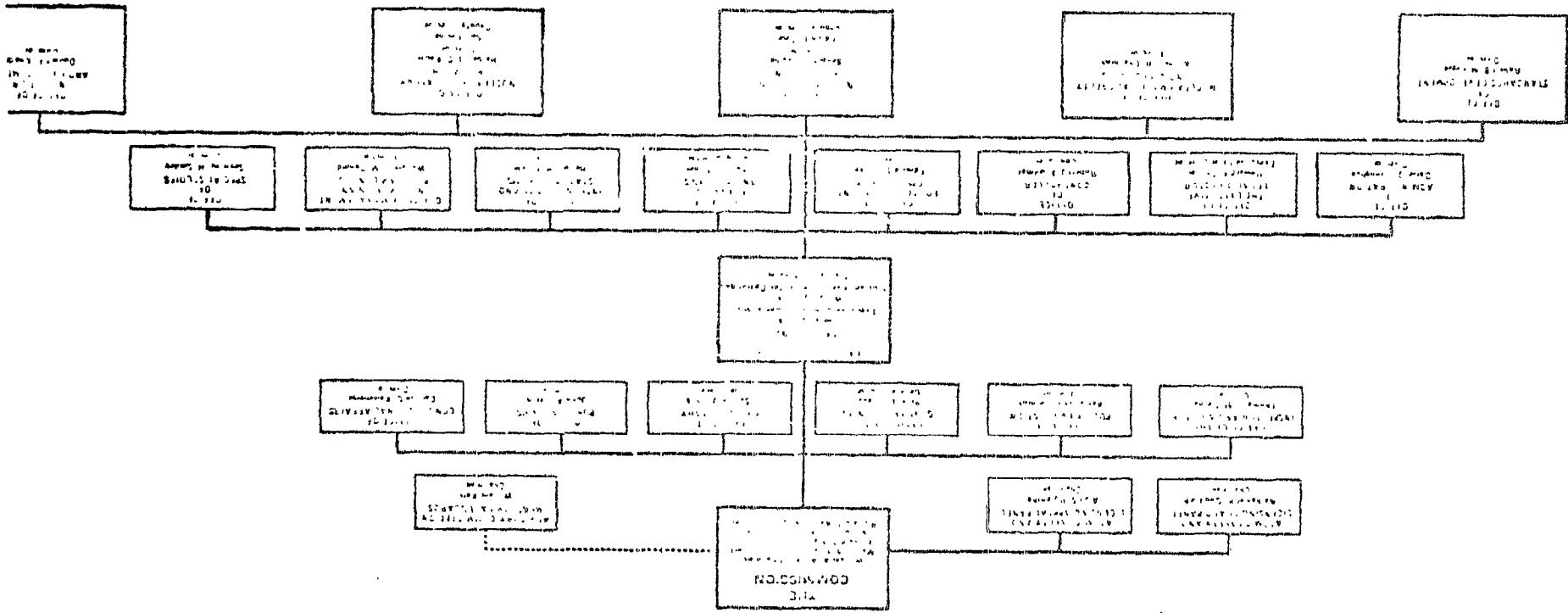
CONCLUSIONS

The Commission has not violated the act by establishing an Office of Standards Development and an Office of Inspection and Enforcement. The enacted conference committee substitute for the Senate version of the act clearly shows that neither the conference committee nor the Congress accepted the Senate version requiring that all regulatory functions be included in the statutory offices. Instead, the act provides for some flexibility and discretion by the Commission in establishing its organization and in assigning regulatory functions.

Sincerely yours,  


Comptroller General  
of the United States

enclosure



NUCLEAR REGULATORY COMMISSION ORGANIZATION