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STATEMENT OF  
J. DEXTER PEACH, DIRECTOR  
ENERGY AND MINERALS DIVISION  
BEFORE THE  
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS *SEN 06600*  
ON  
[REORGANIZATION PLAN NO. 1 OF 1980] *hp*

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to be here to present our views on the President's plan for reorganizing the Nuclear Regulatory Commission.

The Energy Reorganization Act of 1974, which created NRC, required GAO to report to the Congress by January 19, 1980, on NRC's effectiveness and efficiency in regulating commercial nuclear activities. On January 15, 1980, we issued our report entitled "The Nuclear Regulatory Commission: More Aggressive Leadership Needed." Let me emphasize that the report represents GAO's assessment of NRC's performance in regulating a wide range of nuclear activities over its first 5 years of existence, as contrasted to other recent investigations of NRC, which focused primarily on circumstances related to the accident at the Three Mile Island nuclear powerplant.

We concluded that a lack of leadership by the NRC Commissioners has been a major factor in NRC's slow, indecisive,



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and cautious performance in its first 5 years of nuclear regulation. My statement today summarizes pertinent findings, conclusions, and recommendations of our report; describes how the Reorganization Plan addresses these findings, conclusions, and recommendations; and comments on the major areas of concern raised to date about the Plan.

In NRC's first 5 years many changes were made to improve nuclear regulation. But, in GAO's view, NRC's overall regulatory performance has been, in a word, complacent. To a large extent, we believe this was due to the Commission's failure to provide leadership and direction to the NRC staff, the nuclear industry, and the public.

First, the Commissioners did not establish measurable regulatory goals, objectives, and systems for measuring performance. NRC's stated goals and objectives have been so broadly phrased that it has been difficult, if not impossible, to measure performance in achieving them.

Second, the Commissioners did not control regulatory policymaking. While there were exceptions, the Commissioners generally permitted the NRC staff to decide when new policies were needed and how they would be written.

Finally, and most important to today's subject, the Commissioners did not clearly define either their own role in nuclear regulation or the role of the Executive Director for Operations. In 1975 the Congress amended the Energy Reorganization Act to make the Commission Chairman NRC's

principal executive officer. This expanded authority is ambiguous, however, because the amendment did not change the original act's provision granting each Commissioner equal authority and responsibility in all decisions and actions. Substantial differences of opinion among NRC Commissioners and senior staff officers on the Executive Director's role in nuclear regulation also contributed to ineffective and inefficient NRC performance.

In our report we also analyzed alternative organization forms to determine if one might be better suited for the two basic, but dissimilar regulatory roles NRC now performs. One role--policymaking--requires deliberation in deciding issues that affect both the near- and long-term direction of regulated nuclear activities. By contrast, the second role--day-to-day regulation--requires firm and timely action on matters relating to licensing, inspection, and enforcement. Basic alternatives we considered included an agency headed by a single administrator and splitting NRC into separate policymaking and regulatory agencies. We concluded that:

--The single administrator form would provide the best organization to efficiently develop goals and objectives, measure performance, and address and resolve regulatory issues--areas which needed improvement. On the other hand, this organization form had much

more potential for abrupt changes in the direction of nuclear regulatory policy.

--The present commission form, strengthened as recommended in our report, would offer the distinct advantage of bringing to bear much deliberation and contemplation on regulatory issues. Also, the Commissioners' staggered 5-year terms help to ensure that nuclear safety policies evolve, rather than undergo abrupt changes.

--A separate commission for policymaking and a regulatory agency headed by a single administrator would combine the strengths of both basic organization forms. Opinions on this alternative, which we obtained from a cross-section of people knowledgeable of nuclear regulation, ranged from active interest to a belief that it represents an unnecessary proliferation of regulatory agencies.

We reached two basic conclusions from our analysis. First, if the commission organization form is retained, the Chairman's role should be strengthened to improve the efficiency of NRC's day-to-day regulatory operations. Second, the commission form is clearly superior for deciding nuclear regulatory policy issues.

We believe the Reorganization Plan now before you for consideration is an important step in the right direction. Specifically, the Plan

--focuses the Commission's work on what we believe are the most basic and important responsibilities of nuclear regulation: policy formulation, rulemaking, and adjudications;

--makes NRC's Chairman the agency's principal executive officer in fact as well as in name; and

--permits the Chairman to clearly define the role of the Executive Director for Operations in day-to-day regulatory activities.

By focusing the Commission's functions on policy formulation, the Plan will allow the Commission to concentrate on developing meaningful and measurable regulatory goals and objectives to guide the Chairman and the NRC staff. As I mentioned earlier, we did not believe the Commission devoted enough attention to this important area in NRC's first 5 years. We found that issues which should have been resolved by policymaking were repeatedly addressed in individual regulatory proceedings, and hearing and appeal boards filled other policy voids by setting out new regulatory requirements in their licensing decisions.

Our report also concluded that NRC's Chairman and the other four Commissioners need to define the Chairman's expanded authority and duties as NRC's principal executive officer in order to improve the efficiency and effectiveness of nuclear regulation. We recommended that the Commissioners seek legislation, if necessary, to do this.

We also concluded that the Commissioners need to define the role of the Executive Director for Operations to make it clear that the Executive Director is in day-to-day charge of all NRC staff-level operations. Differences of opinion among Commissioners and senior staff-level officials on the Executive Director's role have made his role at NRC, in our opinion, ineffective and almost superfluous. By providing the Chairman the authority to establish a strong role for the Executive Director, the Reorganization Plan addressed our concern.

While our report did not specifically address the subject of the Chairman's emergency management role, we nevertheless agree with the emergency management provisions of the Reorganization Plan. I would like to point out that the requirement that the Chairman or his delegee carry out this new authority while conforming to Commission emergency management policy illustrates well the Commission's policy-making role compared to the Chairman's executive role.

In summary, the Reorganization Plan does address the concerns which we highlighted in our report. Let me now turn briefly to some of the concerns that have been raised by individual Commissioners about the Plan in earlier testimony before this Committee.

A major concern of some Commissioners is whether the Plan makes the Chairman too powerful, particularly in the areas of (1) appointment of key officials, (2) access to

information, and (3) the collegial Commission's ability to hold the Chairman accountable for his actions. In a statement approved by a majority of Commissioners and presented to this Committee, the Commission majority advocated an alternative of creating a strong Executive Director for Operations to manage NRC's day-to-day operations.

A majority of NRC Commissioners object to the provisions of the Reorganization Plan giving the Chairman exclusive authority to (1) nominate appointments to key staff positions and members of the Commission's Advisory Committee on Reactor Safeguards and (2) appoint the Executive Director for Operations and four of the six major staff-level office directors.

We believe these two objections are valid and worthy of serious consideration. We see no good reason for precluding all Commissioners the right to input into the nomination process for all positions requiring Commission approval. Furthermore, we believe the list of such positions should be expanded to include all six major staff-level office directors and the Executive Director for Operations, because these officials are directly involved in activities for which the full Commission is responsible.

Several Commissioners also testified that they are concerned about their continued access to information and about their ability to hold the Chairman accountable for his actions. I have several comments on these matters.

First, under the Reorganization Plan the Commission retains, in addition to its policy formulation and rulemaking authority, the basic agency authority to issue, amend, suspend, and revoke licenses, as well as to impose civil penalties and issue show cause orders. We believe this authority means that all Commissioners have the right of access to all information within NRC relating to policy matters and rulemaking; and licensing, inspection, and enforcement cases; as well as all data and analyses on licensees' performances in constructing and operating nuclear facilities or possessing, using, transporting, and disposing of regulated nuclear materials.

Second, to a large extent NRC conducts its regulatory operations in a public manner. Correspondence to and from license applicants and licensees is routinely placed in NRC's public documents room. Also, according to NRC staff officials, the agency has gone beyond the requirements of the Freedom of Information Act by routinely placing intra-agency memoranda on licensing, inspection, and enforcement cases in the public documents room.

Third, we recognize that much of the concern over access to information relates to the potential for the Chairman and his staff to deliberately withhold information from the official records and files to which Commissioners would have access in performing their policy formulation, rulemaking, and/or adjudication functions. I can only respond that



the potential for this kind of problem has always existed and always will, regardless of NRC's organization structure.

Fourth, the Commission can use its Office of Inspector and Auditor as one safeguard for protecting Commissioners' access to information and for holding the Chairman accountable for faithfully executing Commission policies. In our January report we recommended that the Commission make better use of this Office in evaluating staff-level performance.

Mr. Chairman, I would like to close my statement with two thoughts. First, the principal area of concern regarding the powers of the Chairman under the Reorganization Plan seems to be that the Chairman will be able to restrict Commissioners' access to information. On this matter, we believe reasonable and rational individuals can and should be able to work together to resolve their differences. Clearly, the Commissioners must have access to all information within NRC which they need to perform their assigned functions; and the Chairman should, within reasonable limits, promptly respond to Commissioners' requests for information not readily available from NRC's records and files.

Second, we recognize that the administration's Reorganization Plan cannot be changed unless the administration chooses to amend it. In essence we support the Reorganization Plan since we believe it is basically responsive to our recommendation and represents a substantial improvement over the way the Commission has carried out its business in past

years. Still, we believe the Plan could be further improved by amending it to take into consideration concerns of the NRC Commissioners in the areas of nominations and appointments of key staff officials, and we would encourage the administration to do so.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions the Committee may have.