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Remarks by
Ivan Selin, Chairman
United States Nuclear Regulatory Commission
at the
Agreement State Managers' Workshop
Herndon, Virginia
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I am pleased to be here with you today for the NRC/Agreement State Managers' workshop. These sessions provide information on the status of the program to date. But, even more important, they provide an opportunity for really frank and open discussions, an exchange of ideas, and ultimately a better understanding of the long term goals and objectives for the future of the NRC/Agreement State program. I strongly encourage your active participation throughout the workshop and especially in this morning's session, which has specifically been set aside to address up front issues of concern to you and your programs.

In a moment I will discuss ways in which we can improve the Agreement State program. But first, I want to reaffirm the Commission's view that the program is a successful and unique example of Federal-State cooperation -- one which has substantially benefited the NRC, the States, the public, and the industry we regulate. Throughout its thirty year history, the Agreement State program has provided reasonable assurance that the public health and safety have been adequately protected. This assessment will continue to be validated by the NRC's close monitoring of the technical and administrative aspects of your programs.

Nevertheless, the Agreement States and the NRC need to acknowledge that there have been some valid criticisms about the effectiveness of this cooperative effort, and that the program needs to grow and change with the times. A few weaknesses have been identified in the existing program which we need to work diligently together to resolve.

The public perception is that the NRC and the Agreement States are too close and complacent; this perception is the downside to the cooperative and long-standing relationship

between NRC and Agreement States. Our agency has been criticized in recent Congressional hearings for assuming States will act in response to NRC requests. For example, in preparing for a recent Senator Glenn/Congressman Synar hearing, we learned that in 1984 NRC recommended that the Agreement States take actions to sample and survey radioactive materials at suspect sewage treatment plants, but NRC did not ask for documentation of any actions taken. We also received criticism during the 1993 Congressman Synar hearing for allowing issues, such as the problem of Agreement States lacking fully compatible regulations, to remain unresolved for long periods of time. The absence of hard evidence; the use of informal, undocumented practices in the NRC's program; and the failure to resolve issues in a timely manner, leave the program open to legitimate criticism. We must, therefore, improve our past practices through more careful documentation in order to enhance credibility of programs managed by the Agreement States as well as NRC.

The Commission believes that the public's confidence in our programs' effectiveness will be increased if there are no major, unnecessary inconsistencies regarding policies and requirements between the NRC and the Agreement State programs, and if both programs are evaluated against common performance measures.

In order to reach the next level of performance, identified program weaknesses demand our immediate attention and appropriate action. It is up to us to take the lead to alleviate weaknesses and to strengthen our overall programs.

In this regard, I want to highlight three principal initiatives for program improvements that are currently underway. Briefly, these initiatives include: (1) the development of a new compatibility policy between the NRC and Agreement State programs; (2) the use of common performance indicators to assess both NRC regional office and Agreement State performance in licensing and inspection of materials licensees and (3) the development of a new umbrella policy statement which will set forth principles for the Agreement State program, including criteria for suspension, probation, and reassertion of authority by the NRC and which establish a standard of excellence for both the NRC and Agreement State programs.

First, later this year we will publish for public comment a new proposed policy statement on Agreement State adequacy and compatibility with NRC regulatory programs. The goal of this policy statement is to balance the uniformity to be required of an Agreement State program against the flexibility allowed to an Agreement State to tailor its program to the needs and circumstances of the State. The new draft policy expresses the criteria for compatibility in terms of the need to have a uniform and consistent national radiation protection program across all

States. We look forward to your active participation in the upcoming public workshop to be held later this year during the comment period.

Second, in accordance with GAO report recommendations, the Commission directed the staff to develop common performance indicators in order to obtain comparable information for evaluating the effectiveness of both Agreement State and non-Agreement State regulatory programs. Without common performance indicators, we do not have good tools to assure that NRC programs and Agreement State programs are achieving a comparable level of performance. The key is a performance evaluation system that has some output measures as well as traditional programmatic measures.

An intensive effort is underway to make the Agreement State review and NRC Regional Office review more compatible through the use of an Integrated Materials Performance Evaluation Program. In March, 1994, the Commission approved the implementation of a modified pilot program in which a team uses the common programmatic performance indicators to review two NRC Regions. The Agreement States portion of the pilot program will be conducted in parallel with the official review, which will be conducted under the existing Policy Statement and procedures for determining adequacy and compatibility. The information gathered by the staff in the Regions and in the Agreement State reviews will be used to evaluate the draft common performance indicators. This refinement of the performance indicators will occur before use of the new indicators for an adequacy finding in an Agreement State.

Currently, reviews have been completed on the two NRC Regions and are being evaluated by a management review board in order to determine the adequacy of the Regions' programs under the pilot program. The results of the pilot program and recommendations by the management review board are due for Commission consideration in November, 1994.

Third, a new draft umbrella policy statement, defining the roles and responsibilities of the NRC and the Agreement States, is being developed. The program revisions will require us to take a more vigorous approach to ensure that troubled State programs receive necessary attention and achieve improvement. The common performance evaluation program will enable us to work more effectively toward improvements in State programs that fall short of the expected level of performance. We are considering an intermediate finding between, on the one hand, adequacy and compatibility, and on the other reassertion of NRC authority. In the new middle ground a State would be put on formal notice that certain program remedies are required if reassertion of authority is to be avoided. This performance evaluation program will not

impact the majority of Agreement States, whose performance has been consistently high over the years. However, a weak program will receive close scrutiny for additional corrective action. The draft new umbrella policy statement for the Agreement States program is being provided to you for comment.

I want to emphasize that the draft umbrella policy statement calls for excellence, both in NRC and Agreement State materials programs. The expectations of excellence call for each of us to take a closer look at our programs and to seek improvements as we gain more experience, particularly with the tools under the pilot evaluation program. This process calls for measuring ourselves against increasingly higher standards of performance in order to avoid complacency that might creep into our programs. The goal expressed through the excellence objective is to maintain among NRC and the Agreement States a cohesive, consistent and credible national program for the regulation of Atomic Energy Act radioactive materials.

We are also taking steps to guarantee that abnormal occurrences and radiation events will be "reported completely and accurately so that NRC can include the occurrences in its quarterly report to Congress." It is essential that this information from the Agreement States be submitted. We must get to the point where we are confident there is no significant difference in accuracy or completeness between NRC and Agreement State event reporting. Other candidates for improvement include an evaluation of the present practice of placing Agreement State-approved devices on the NRC registry, an evaluation of the effectiveness of current procedures for handling reciprocity, and the need for codification of the Agreement State program in a new part of the NRC regulations.

As you know, the NRC is currently developing an Atomic Energy Act materials event data base which is expected to be functional before the end of fiscal year 1994. The database structure is being designed for NRC/Agreement State equivalent event reports. We believe that the Agreement States, and thus NRC, can receive substantial benefit and provide valuable input by participating in the development of and providing reports to the data base. The data base will improve our joint ability to identify precursors to more serious events to users of radioactive materials as well as provide data back to the States and users on significant events.

Another important area I want to address at this time is the subject of fees. As you are well aware, the NRC is required to recover approximately 100% of its budget costs in fees to licensees. The Energy Policy Act of 1992 required the NRC to review its policy for assessment of annual fees and solicit public comment on the need for changes to this policy. NRC was

required to recommend changes in the existing law to the Congress to prevent placement of an unfair burden on certain NRC licensees.

There are currently 29 Agreement States; four additional States have expressed interest in participating in the program. Because two thirds of the licenses are held in Agreement States, the remaining one third have to carry the overhead for all the licenses. The Commission must seek relief to support the Agreement State program. We will no longer be in a position to carry the burden of funding the program alone; we cannot expect NRC licensees to carry an increasing financial burden to support the program when they receive no commensurate rise in benefits. The only viable alternative, as we recommended to Congress, seems to be statutory funding of this program. I can say with certainty that if federal funding is not pursued by Congress and supported by the States, NRC will be forced to look for other measures to support this program.

The Commission's strong interest in the Agreement State program will continue. As you may know, the Commission currently reviews every staff program review report that proposes to withhold either adequacy or compatibility. Commission approval is required for all policy and significant program revisions, such as the development of the new draft compatibility policy. We continue to receive information on the status of Agreement State promulgation of rules equivalent to the NRC's new Part 20.

I want to acknowledge that this is an extremely demanding time both for the Agreement States and for the NRC because of the program revisions that we are collectively developing and implementing. While these challenges will be difficult, I am confident that the necessary program revisions will result in improvements beneficial to the NRC, the Agreement States, the licensed community and the public. Your support in achieving this goal of a more effective and efficient Agreement State program is critically important. I think we have already made significant strides toward achieving this objective.

In conclusion, I believe our thirty years of success in the Agreement State program is the firm basis for this unique relationship. However, the time has come to evaluate and implement initiatives which will elevate the Agreement State program to a higher level of achievement. These initiatives and effective management oversight will continue to build and further strengthen public trust and confidence in the nuclear materials program of both NRC and the Agreement States. I envision a more consistent, coherent, national program for the regulation of the use of Atomic Energy Act materials. The program should be well-documented, predictable, and developed with input from all interested parties, including the public. It should focus on

those areas that directly relate to safety and lead to a more effective and efficient use of NRC and Agreement State resources.

I am hopeful that Agreement State program managers will continue to work cooperatively with us to develop and implement what I think are positive improvements in the Agreement State program. In all these initiatives, we continue to seek your cooperation and assistance, and encourage an open and participatory dialogue on the difficult issues facing us both. The success of our programs depend on it.