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Remarks of Ivan Selin
Chairman, U.S. Nuclear Regulatory Commission
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INDEPENDENCE AND OPENNESS
IN REGULATION OF NUCLEAR WASTE

Good morning, ladies and gentlemen. I appreciate the opportunity to speak to you this morning. In past remarks I have touched on several themes of importance in NRC's regulation of nuclear power plants. Those themes are not limited, however, in their applicability. In fact, the themes of openness and independence which I'd like to address this morning are equally, if not more important, in the areas of waste management and decommissioning. I'd also like to take this opportunity to bring you up to date on some major NRC initiatives which will affect fuel cycle licensees.

I came to the agency believing that it is necessary to change the status quo -- that is, that we in the nuclear power field will have to change our way of doing business in the future. The change I have in mind entails much more openness to the public, a change which is necessary in order to facilitate public understanding of the nuclear industry. Without understanding there will be no acceptance of, nor support for, nuclear power. And without nuclear power as an option, our country loses the potential benefits of having a range of energy options from which to choose.

The public has a right to know the facts about the NRC and NRC-licensed activities. The public needs to know what the NRC does and why: our strengths, our weaknesses, and the limitations of our role, relative to that of our licensees. If things go wrong, the public must of course be told promptly and candidly. And by the same token, when things go well the public has a right to know that too. The NRC should be willing to provide realistic assessments at all times. We need to tell the whole story, both the good and the bad.

In addition to the critical need for openness, it is equally important for the public to believe that NRC is independent in its regulatory actions. It is essential that the public have confidence that nuclear materials are being safely and effectively regulated from the point where uranium ore is first processed until the waste from all aspects of the fuel cycle--low level waste as well as high level waste--is permanently disposed. I believe that NRC has been a strong regulator in these areas in the past, that we have based our decisions on the safety judgments of technical experts. However, we need to continually reexamine our efforts to assure this is the case.

Because openness and independence affect public confidence about the safety of licensed facilities, you have a stake in this process. Our credibility as a tough, but fair, regulator stands to affect the future of nuclear power. Accordingly, it stands to affect not only the relative size of your business, but also the climate in which you conduct that business.

The Commission is taking several initiatives in the areas of waste management and decommissioning. Important to each of these is a focus on openness and independence. I'd like to take a few minutes to discuss some of them with you.

DECOMMISSIONING AND DECONTAMINATION

In decommissioning and decontamination, the NRC is developing an action plan for cleanup of the so-called "Synar sites." These are a group of 40-some licensed or previously-licensed sites around the country, most of which are contaminated to varying degrees with uranium and thorium. Cleanup of these sites has languished, in part because of the lack of codified standards. Many of these sites are in densely populated areas and, although they don't pose an imminent health and safety hazard, the Commission believes that their cleanup is clearly in the public interest.

The staff's action plan will be a comprehensive one designed to move forward on cleanup and termination of the licenses at each of these sites. We intend to disseminate the plan and to involve the public in the affected areas in our reviews of site characterization and remediation plans. In a related action, we're moving ahead with a plan to answer the question, "How clean is clean enough?" For years our decisions on license terminations have been made on a patchwork of guides and technical positions. As I noted a moment ago, there has not been a codified basis to those decisions. The Commission's policy statement on Below Regulatory Concern sought to provide that basis. For a number of reasons, this approach was not successful. In addition, our subsequent effort at convening a group to develop consensus on BRC issues did not succeed.

The staff has subsequently developed a plan to go out and work with interested groups on issues associated with establishment of residual contamination criteria for returning licensed facilities to unrestricted use. The need for such criteria is obvious--to apply a common set of standards to the cleanup of a variety of contaminated facilities. The objective of the staff's plan is to identify and discuss issues through a series of regional workshops involving representatives from industry, States, public interest groups and other Federal agencies, including the Environmental Protection Agency. From that effort as well as preparation of a Generic Environmental Impact Statement, the staff will develop a proposed rule which will provide specific criteria for acceptable levels of residual contamination for decontamination of licensed facilities. The process of workshops and rule development will be a lengthy one. However, the Commission thinks it will have a substantial payoff, not only in building public confidence through involvement, but also in providing a measure of predictability in our licensing decisions for decommissioning and decontamination.

If this process is successful, it could serve as the template for early and substantive public involvement in future rulemakings on other complex issues.

HIGH LEVEL WASTE

Openness and independence are also critical aspects of NRC's first-of-a-kind licensing of a high level waste repository. As you know, the Department of Energy is charged with the responsibility of developing that repository, and at present the focus of their efforts is at Yucca Mountain, Nevada. I recently visited Yucca Mountain and received briefings on the programs underway there to determine whether it is a suitable site. I also talked with representatives of the State of Nevada about their interests and concerns.

Before DOE can construct a repository, NRC must review DOE's license application and, under the Nuclear Waste Policy Act, make a licensing decision in three years from receipt of that application. There are difficult technical decisions that will have to be made, many dealing with the ability of both natural and man-made systems to provide the required isolation for upwards of ten thousand years.

NRC is moving forward with a multi-faceted program to assure that when DOE submits an application, we are ready to review it. One aspect of that program is scheduled, systematic consultation with DOE on technical issues. While the issues addressed by the staff in these meetings are varied, there are three aspects of the meetings that are common: the meetings are noticed in advance and open to the public, the State of Nevada is an invited participant, and the formality of the meetings preserve NRC's independence as regulator.

There has been some skepticism concerning the relationship between NRC and DOE, questioning whether the line between regulator and applicant has been blurred. As I indicated a moment ago, the dialogue between the two agencies is an entirely open one. My sense at this time is that the relationship between DOE and NRC is appropriately formal and independent. There is a clear need for dialogue in this pre-licensing period to assure that technical issues and positions are understood prior to DOE's development and submittal of a license application. The review of that application will be governed by the Commission's procedural framework contained in 10 CFR Part 2. However, to assure that criticism about NRC-DOE communications remains groundless, I have asked NRC's Executive Director for Operations and the General Counsel to review the procedural safeguards that are in place and evaluate their implementation.

NRC is also moving to assure that the regulatory framework is clearly defined. The staff is working with our independent contractor, the Center for Nuclear Waste Regulatory Analysis, in San Antonio, to review and resolve areas of ambiguity or uncertainty in our HLW licensing regulations contained in Part 60. This effort, known as the Systematic Regulatory Analysis, or SRA, has so far identified approximately 50 areas of uncertainty. The staff is responding to those by various means including rulemaking, development of technical positions, and issuance of regulatory guides. In so doing, we hope to have clearly defined the regulatory requirements well in advance of DOE's application submittal.

In a separate effort, I have asked NRC's independent Advisory Committee on Nuclear Waste to undertake a systems analysis look at the problems associated with high level waste disposal and report back on whether any significant problems are not being addressed. The ACNW held a working group meeting open to the public in February at which it heard from DOE and a number of experts in the field of nuclear waste management. I expect to receive a letter report from the Committee shortly.

As a final note, Commissioner Rogers will present a major speech on NRC's role in HLW licensing on April 13 at the 3rd International HLW Management Conference in Las Vegas.

LOW LEVEL WASTE

Perhaps the most contentious area of nuclear energy and nuclear materials in recent years has been the development of new low-level waste disposal facilities. As the States and Compacts have moved to implement Congressional intent of the Low Level Radioactive Waste Policy Amendments Act, opposition to siting of disposal facilities has grown more heated and, as you are probably aware, has reached the Supreme Court with a challenge to the constitutionality of the Act.

If adequate LLW disposal capacity is not developed in a timely fashion, there could be serious impacts for nuclear materials users as well as nuclear power in the broad sense. Materials users will feel the effects of inability to dispose of their waste relatively quickly due to their limited space for waste storage. As a result, we could see a general phasing out of the use of such materials in areas where they have clearly demonstrated substantial benefits, such as nuclear medicine and nuclear pharmacy. For nuclear power plants, short-term LLW storage would be less of a problem, but I believe that shortages of LLW disposal capacity could ultimately be crippling to the long-term future of nuclear power.

The focus of LLW licensing has been and continues to be at Agreement State level, i.e., those States who have entered into an Agreement with NRC whereby the NRC will discontinue its authority for regulating certain materials and the State will assume it. NRC's role has been the establishment of the technical and regulatory framework within which that licensing will take place. One issue we're addressing within that framework is our policy on compatibility of Agreement State programs with those of NRC. We've increasingly heard from the Agreement States that our policy regarding compatibility with our regulations has been too inflexible.

This is especially acute in the area of LLW licensing, where pressures are brought to bear on Agreement States to have more stringent criteria than those contained in our LLW regulations, Part 61. The Organization of Agreement States provided specific recommendations on NRC's overall compatibility policy, as did an NRC task force. In keeping with our policy of openness, we recently issued a Federal Register notice asking other interested parties to give us their views on several aspects of compatibility. We'll consider the responses we receive and plan to make a decision on how to proceed this summer.

Also in the LLW area, we've directed the staff to develop a proposed rule on storage of waste beyond January 1, 1996. As you know, that's the date when States are required by the Low Level Radioactive Waste Policy Amendments Act of 1985 to take title to and/or possession of LLW from waste generators who request them to do so, or be liable for damages. (I would note here that we will closely follow the Supreme Court's decision on the constitutionality of the 1985 Act to determine its impacts on this rulemaking effort.) The Commission continues to look upon storage as a last resort in terms of waste management. Whenever disposal is available, we believe that generators should promptly move their waste off-site to disposal. However, we also recognize that the disposal alternative may not be available to all waste generators at the beginning of 1996.

Our direction to the staff takes that reality into account, but does not encourage storage. Basically, we'll require

licensees who must store their waste beyond that date to document that they've exhausted the reasonable waste management options. That is, the licensee must document that the options of State acceptance and possession of LLW as well as contracting for disposal of waste elsewhere have been explored and rejected.

We think that this approach is a reasonable one, consistent with our past positions on storage and in line with Congressional intent as expressed in the 1985 Act. We intend to publish a notice of proposed rulemaking shortly that will embody this approach. The Commission will be interested in the views others may have on this matter. If you are interested in more background on this proposal, I highly recommend that you read Commissioner Remick's recent speech delivered at Waste Management '92 in Tucson.

FUEL CYCLE LICENSING

In addition to the waste management initiatives I've mentioned, NRC is also carefully examining how we license fuel cycle and major materials facilities. As you know, we've had several incidents in this area over the past year or so which were troubling. At GE-Wilmington and at NFS-Erwin, the incidents were related to criticality controls. I don't have to tell you that a criticality incident at a fuel cycle facility could have disastrous repercussions, beyond the very serious worker health and safety effects. At General Atomics' Sequoyah Fuels plant, the staff and the Commission have had numerous disparate issues to deal with.

The incident at GE-Wilmington has provided us with considerable food for thought regarding our own licensing and inspection program. NRC's Executive Director for Operations chartered an Incident Investigation Team shortly after notification of the situation at Wilmington. In its investigation of the root causes of the incident, the team not only addressed problems at the facility but also problems with NRC's licensing and inspection program related to that facility and others like it. The team made several findings regarding licensing and inspection, which included: 1) regulations and guidance for fuel facility emergency planning and incident reporting were vague; 2) there were misunderstandings about the license review process between HQ, the Region and the Licensee; and 3) the inspection program was limited in its focus.

These findings are being addressed at several levels, the broadest of which is a regulatory review task force. The task force has examined the regulatory process for fuel cycle and large material licensees from beginning to end and has developed a draft report documenting their recommendations (NUREG-1324). These recommendations address NRC licensing, inspection, regulations, staffing and training. NRC has not yet made any decisions about which, if any, of the recommendations to adopt.

We have, however, made the report available for public comment. I would encourage you to review it carefully and provide us with your thoughts about how the regulatory process can be improved.

The staff is reviewing our inspection program to better focus on management oversight and review of changes to operations. We're also beefing up our capabilities in the area of criticality analysis. The number of experienced professionals in this area has been dwindling for some time. As a result, NRC has experienced difficulties in finding, recruiting and retaining criticality professionals. To improve our capabilities, we're working on expanding our core of experts through a combination of work assignments, formal training and fellowships at NRC in the criticality area. We're also looking to provide improved skills in criticality for our inspectors.

Finally, one of my major priorities in the materials area is to provide a well-defined basis to the program. As it currently stands, much of our licensing has been done on an ad hoc basis, with little replicability across the board. While I recognize the great diversity of licensed operations out there and the attendant need for specificity, I also think there needs to be greater commonality in how we do business. We have a firm statutory and regulatory basis for licensing and inspection. What we need is a way of conducting business that is consistent and makes sense.

SUMMARY

A lot of what I've said this morning has focused on what NRC is doing. We plan to develop a formal set of cleanup criteria for decommissioning and decontamination of licensed facilities and, in the interim, we plan to take action to cleanup a number of existing contaminated sites. We're continuing our open dialogue with DOE on clarifying the technical issues and the regulatory framework for licensing a HLW repository. In the LLW area, we're addressing the problem of post-1995 waste storage within the framework of the Amendments Act and we're seeking to clarify our policy on Agreement State compatibility. Finally, in the materials area, we're improving our licensing and inspection programs and thereby placing the entire materials program on a more consistent, predictable basis. In each of these initiatives, we're seeking to increase openness and public involvement in what we do and, by inference, in what you do.

While these initiatives are important, they can't fully succeed without your cooperation. It is in your best interests both from a compliance standpoint as well as a management standpoint to examine your operations carefully. You will be better served in the long run if you find and fix problems yourself, before they become serious regulatory issues. I have to admit there's somewhat of a selfish motive here, too: to the

extent that you're effective in self-policing, our limited resources can be stretched farther.

I hope that I've given you some things to consider over the next few days here. You have my best wishes for a successful conference.