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ALL AGREEMENT STATE MEETING KEYNOTE ADDRESS

"THROUGH THE LOOKING GLASS:
REFLECTIONS FROM THE OTHER SIDE"

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Rockville, Maryland

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INTRODUCTION

Good morning, ladies and gentlemen. I am glad to see so many friends and colleagues at this, the 1996 annual All Agreement States Meeting. As you can well imagine, this is a unique experience for me in that I am not a stranger to these meetings, and, in fact, had the honor to serve as Chairman of the Organization of the Agreement States (OAS). Having now stepped through the looking glass, so to speak, I have the opportunity to view the NRC Agreement State program from the perspectives of both a NRC Commissioner and as a former Agreement State radiation program director.

I will begin my remarks this morning with a short review of the Agreement State program. I will then share with you my impressions of the NRC and my views on basic regulatory concepts, provide you the latest news on NRC's strategic assessment and rebaselining, and discuss some of the personal values that I bring to the Commission. Finally, I will offer thoughts for the future of the Agreement State program.

In Lewis Carroll's "Through the Looking Glass," the King says:

"I shall never forget!"

To which the Queen replies,

"You will, though, if you don't make a memorandum of it."

The following is my brief memorandum on the history of the NRC Agreement State program.

THE AGREEMENT STATE PROGRAM - A SHORT HISTORY

The Agreement States Program was the product of a lengthy, thoroughly deliberated Congressional action that culminated in 1959 in a carefully crafted addition to the Atomic Energy Act, Section 274, entitled "Cooperation With States." The most significant part of Section 274 was the creation of a unique program of cooperation with the States in the regulation of nuclear materials, the Agreement State program. In 1983, 24 years later, the National Governors Association cited this program as a remarkably successful endeavor in Federal-State relationships.¹ Today, it continues to stand as a uniquely successful program in this regard. Nonetheless, it was not without controversy at its inception and, in the 34 years since the first agreements were signed in 1962, there have been differing views among its stakeholders about the direction and implementation of this program. When I say stakeholders I mean not only the NRC and the States but the most important of the stakeholders, the licensees and the public whose public health and safety we are obligated to protect. How well we reconcile those differing views and also meet our regulatory responsibility of protecting the public health and safety and the environment are my subjects this morning.

When the 1959 legislation was introduced into the Congress, the Atomic Energy Commission (AEC) commented that,

"It provides a statutory framework within which the States may assume an independent regulatory role in extensive areas now occupied by the Atomic Energy Commission on a basis which will assure appropriate protection for public health and safety and continued compatibility of the regulatory programs of the States and the Atomic Energy Commission."²

The Joint Committee on Atomic Energy, in its comments on the bill, also emphasized the bill's intent to

"clarify the responsibilities of the Federal Government, on the one hand, and State and local governments, on the other..."

The Committee went on to say that:

"[i]t is also intended to increase programs of assistance and cooperation between the Commission and the States so as to make it possible for the States to participate in regulating the hazards associated with such [radioactive] materials."

With respect to Section 274i which authorizes the Commission to provide training or such other assistance to employees of States or local governments, the committee report said that,

"such assistance shall take into account the additional expenses that may be incurred by the State as a consequence of the State entering into an agreement with the Commission."

The Committee also took into account that such training would have wide spread benefits in that the capacity of State and local officials to

"deal with the other materials already under their responsibility - such as X-ray machines and radium - would also be increased, thus further protecting the public health and safety."³

Some examples will show that the Agreement State program and its associated training provided to the States by the NRC has become a valuable national asset. In 1983, when radioactively contaminated iron and steel products were unknowingly imported from Mexico into the United States, the States responded to NRC's request for assistance in surveying, locating, and controlling contaminated products. As a result over 500 tons of contaminated steel rebar and 2,500 contaminated cast iron pieces were returned to Mexico.⁴ The States contributed 7.9 person-years of direct effort and incurred over \$200,000 in out-of-pocket expenses.⁵

Similarly, in 1991, radioactively contaminated steel fence components were imported from India. In 1993, radioactively contaminated ferrophosphorus was imported from Kazakhstan. In both cases, radiation surveys by the States helped to assess the potential radiological impact. In 1988, when the NRC recalled 48,000 defective ²¹⁰Po static eliminators the Agreement States provided over 8,000 hours of survey effort to support the NRC decision.⁶ When the States provide such assistance it occurs at the cost of diverting critical, and usually limited, State resources from the States' programs to protect public health and safety in areas that they are responsible for. There are, however, no provisions for reimbursements to the States for such assistance nor have any been made.

If the Agreement State program were not in place, the NRC would be responsible for regulating an additional 15,000 specific materials licensees and over 60,000 general licensees with the attendant needs for staff and training, all at Federal, not State, cost levels. Given Congressional mandates to reduce our budget, notwithstanding that it is almost entirely paid for by licensee fees, the NRC is not staffed to assume responsibility for a large number of licensees from Agreement States that might elect to terminate their programs.

In summary, Congress, when it enacted Section 274, concluded that there was a need to more clearly sort out the roles of the States

and the Commission, recognized that States would incur additional expenses by taking advantage of the agreement program, and, prescribed a means for offsetting this burden. In practice, the Agreement States have become a valuable national resource, thanks to the NRC Agreement State Program. The NRC has avoided significant regulatory costs and the Federal Government can rely on the Agreement States to augment national responses to radiological events that pose a potential threat to the public health and safety.

Like Alice's King, we should not forget this.

IMPRESSIONS OF THE NRC

Since becoming a Commissioner I have been more impressed than ever by the professionalism of the NRC and by the wide range of activities that NRC regulates, nuclear reactors and related fuel cycle activities, radioactive materials, and waste disposal. In addition to all this, the NRC has extensive international responsibilities.

I have seen how much we can learn from our fellow international regulators and how important it is to share information with other Federal and international agencies and organizations. In April of this year I attended an international meeting on the radiological consequences of Chernobyl sponsored by, among others, the International Atomic Energy Agency. I have also been appointed by the Chairman as the NRC representative to the Joint Coordinating Committee on Radiation Effects Research, a joint U.S.-Russian committee to coordinate research that former Commissioner Gail de Planque was instrumental in creating. This research is focussed on radiation effects of exposures of workers and the public in and around U.S. nuclear weapons plants and the Russian nuclear complex at Mayak near Chelyabinsk. Some preliminary reports on the research opportunities there were presented at the 1994 annual Health Physics Society meeting in San Francisco and published in the July, 1996 issue of Health Physics.⁷

On the other side of the coin are the frustrations that arise from the lengthy amount of time it takes the NRC to focus upon and, then, resolve issues. Examples are lengthy rulemaking activities, development of responses to correspondence and requests, and regulatory guidance development. As the Red Queen said to Alice,

"Now, here, you see, it takes all the running you can do, to keep in the same place. If you want to get somewhere else, you must run as least twice as fast as that!"

Well, I hope we can improve in this area not by running twice as fast but by working more efficiently.

I am concerned that communications with stakeholders and even within NRC are not always clear. One result is that when regulatory problems emerge questions also arise about the effectiveness of our regulatory oversight. Examples of such issues are those recently identified concerning the reactors operated at Millstone, Maine Yankee and Haddam Neck.

Earlier this year I participated in a celebration marking 100 years of use of radioactive materials at the annual meeting of the Conference of Radiation Control Program Directors. I remarked that the last 100 years was marked by constant change and evolution in the use of radioactive materials; hence for the next 100 years, we, as regulators, must be flexible. We must be prepared to meet the regulatory challenges presented by future changes in how radioactive materials are used and we must do so with shrinking resources.

BASIC REGULATORY CONCEPTS

In 1991, under the sponsorship of Commissioner Rogers, NRC issued its Principles of Good Regulation which include the concepts of Independence, Openness, Efficiency, Clarity and Reliability.⁸ Inherent in these principles is the concept of necessity, the importance of open channels of communication, the responsibility and accountability of regulators and the need for self-assessment by and responsiveness of regulators to changing needs and the need to involve users, the public, and other stakeholders in the development of regulatory programs.

An example of fully and successfully involving licensees, the Agreement States and other stakeholders was the approach taken by the joint Agreement State-NRC Working Group charged with reviewing the need for better control and accountability of licensed devices. While the Commission has not yet received the staff's recommendations, the Working Group's report is publically available and will be published as a NUREG. I noted with interest that the core recommendations originated from representatives of the stakeholders most likely to be affected, the vendors and licensed users of these devices. This happened because the Working Group reached out to the stakeholders early on and fully involved them in their deliberations. This working group is a model for future regulatory initiatives which jointly involve the Agreement States and the NRC.

Finally, we must recognize that regulatory programs must be flexible because statutory requirements change, technologies change, priorities change, and resource allocations change. In this sense, I believe that the NRC is well prepared because of NRC's Strategic Assessment and Rebaselining.

STRATEGIC ASSESSMENT AND REBASELINING

Now let me give you the news about the NRC's Strategic Assessment and Rebaselining.

In 1995 Chairman Jackson, after consulting with Commissioner Rogers, concluded that, given the changing environment in which NRC must conduct its business which includes increasing budget constraints, staff should conduct a strategic assessment and rebaselining. Such an effort would also provide additional assurance that the NRC would meet the requirements of the Government Performance and Results Act of 1993. After reviewing over 4,000 NRC activities and the reasons behind them, the Commission staff identified several key Direction Setting Issues (DSIs) and developed policy issue papers for preliminary Commission consideration. The approved issue papers including the Commission's preliminary views were released for public comment yesterday, September 16th. I understand that copies will be available at this meeting. The Commission set for itself and the staff an ambitious schedule for moving forward on this effort. According to this schedule, staff will begin a series of public meetings with stakeholders beginning in October. The schedule calls for final Commission decisions on the issue papers beginning next year.

Each issue paper generally starts with a discussion of the issue followed by a list of options to consider, and, in most cases, preliminary views of the Commission on these options.

I urge you to carefully follow developments. The public meetings will be on October 24 and 25 at the Washington, D.C. Hilton, October 31-November 1 at the Colorado Springs Sheraton and November 7 and 8 at the Chicago Ramada at O'Hare. Try to attend and participate. If you cannot attend the public meetings then please send us your comments. I assure you that your comments are important - we want to hear them, to read them, and we will consider them carefully.

PERSONAL VIEWS

I have spoken about my personal impressions of the NRC, the basic regulatory concepts that undergird NRC's regulatory programs and the need to assure that our regulatory program will continue to provide a good fit with current and future needs. You may also ask, "Commissioner, what are the beliefs that you as Commissioner bring to the regulatory decision-making process?"

First, I believe in the Commission system of making decisions for this agency. The advantage of the Commission form of administration is that decisions reflect the expertises and diverse perspectives of the individual Commissioners. This assures that agency decisions have been carefully thought through. When a consensus is not attainable, the separate views of the minority

provide insights into the Commission's decision making.

As you can see, I am a strong believer in seeking stakeholder input as early as possible in the decision-making process. Do we need a regulatory effort, and what form should it be in, are questions that should be asked early and often and in settings that encourage stakeholder responses.

We need to carefully consider the full impacts of regulatory actions. An example is the Commission decision to seek recovery of costs for training and other support for the Agreement States. In my view, this decision deserves further consideration because this policy may lead individual States to drop out of the Agreement State program in the future. As I said earlier, the NRC is not staffed to assume responsibility for a large number of programs that Agreement States might return to us. I am also concerned about seeking reimbursement from our fellow countrymen in Agreement States for services while those provided to foreign governments and their employees are paid from revenues derived either from NRC licensee fees or from public revenues.

Because the Agreement States are key elements in the overall national program for protection of public health and safety and the environment with respect to materials covered by the Atomic Energy Act, the NRC needs to be sure that we do not undertake an action that jeopardizes your continuing participation in that program. It is not clear to me that this action will not jeopardize your continuing participation in this program. This matter will be addressed under the Strategic Assessment umbrella, but beginning October 1st, the Agreement States will have to reimburse the NRC for training and other costs. Therefore, I am going to soon ask the Commission to re-examine its position on this matter. I would appreciate learning your additional views on this matter.

I would add to the foregoing values my personal belief that regulatory decisions should stand the tests of reasonableness, necessity, and cost-effectiveness. Again, I note that these personal values fit well with the NRC Principles of Good Regulation that were in place when I began my term as Commissioner.

THE FUTURE - WHERE DO WE GO FROM HERE?

One thing is constant, change. I believe that the Commission is positioning itself to respond well to the changes that confront the NRC and the Agreement States. NRC must strive for openness, flexibility, actively seek stakeholder input and be willing to undergo critical self-examination. Collaboration with the Agreement States, which today regulate well over two thirds of the licensees in the United States, is essential.

What should the Agreement States do? Let me offer some views that

reflect my experiences as a State radiation control program director and a NRC Commissioner.

The Agreement States need to become more visible but in an organized way. Twenty-nine independent and sometimes disjointed opinions will never have the same impact as a timely, coordinated, well-written communication. At its annual meeting in May, 1996, the Conference of Radiation Control program Directors (CRCPD) developed a position on the National Academy of Sciences Report on regulation of radioactive materials in medicine. This position is a model of its kind: well drafted and conveying a clear sense of the views of the State radiation control programs.⁹

When you are in Washington, especially those of you who are members of the executive committees of the CRCPD and the OAS, you should routinely ask for courtesy visits with all of the Commissioners. Your visits will be especially important because you can personally make the Commissioners aware of the views and concerns of the Agreement States. When you visit Commissioners, you have direct input. You will also gain a better understanding of the Commissioners' concerns.

Prior to these visits, you should decide what issues are important to you. Be prepared to discuss your issues in detail. For example, what are the foremost issues for you at this moment? Funding for training? Regulation of licensed materials used in medicine? Oversight of the DOE? Control and accountability of licensed devices? Have a prepared agenda and keep it up to date perhaps with the assistance of the CRCPD Secretariat.

In short, be proactive!

Tweedledee's poem, "The Walrus and the Carpenter," contained the memorable verse,

*"The time has come," the Walrus said,
'To talk of many things:
Of shoes - and ships - and sealing wax -
Of cabbages - and kings -
And why the sea is boiling hot -
And whether pigs have wings.'"*

I have not spoken today about whether pigs can fly, but, whether the Agreement State program can continue to prosper. The Agreement State program is part of a national fabric of radiation protection. We, the regulators, our licensees, their workers, the public and the environment are threaded together. We, the regulators, and our licensees are joined in the common goal of protecting workers, the public, and the environment from the potentially harmful effects of radiation from radioactive materials. The degree of regulation and the approach are almost always matters of disagreement. But, all

of the stakeholders - regulators, licensees, workers, and the public - must commit themselves to working together to meet that goal. When the regulators adhere to the principles of good regulation, actively seek the involvement of all of the stakeholders, and remain flexible and openminded in response to changing environments, effective regulation for radiation protection will not be a dream, as was Alice's looking glass house, but a reality.

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