



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 30, 2001

MEMORANDUM TO:

Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM:

Dennis K. Rathbun, Director
Office of Congressional Affairs

SUBJECT:

NEI TESTIMONY ON NRC/EPA DUAL REGULATION AND
NUCLEAR ENGINEERING EDUCATION

The House Appropriations Committee's Subcommittee on Veterans Affairs, Housing and Urban Development and Independent Agencies held hearings on March 21-22, 2001, on FY 2002 appropriations for programs under its jurisdiction. Of particular interest to the NRC is the testimony of Ralph L. Andersen of the Nuclear Energy Institute. He testified on the current situation with EPA, the lack of progress in developing a Memorandum of Understanding, and the need for legislative action. Additionally, Mr. Andersen thanked the Committee for its legislative efforts to support nuclear engineering education.

Mr. Andersen's testimony is attached.

Attachment:
As Stated

cc: EDO
OGC/Cyr
OGC
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Contact: Linda Portner, 415-1673

**Testimony of
Ralph L. Andersen
Chief Health Physicist
Nuclear Energy Institute**

**Before the
Appropriations Subcommittee on VA-HUD and Independent Agencies
U.S. House of Representatives
March 21, 2001**

Mr. Chairman and members of the subcommittee, my name is Ralph Andersen. I am the chief health physicist at the Nuclear Energy Institute. I have worked in the areas of radiation protection, site cleanup and decommissioning, and nuclear waste management for 28 years. Before joining NEI nine years ago, I was superintendent of radiation protection at Detroit Edison Company's Fermi 2 nuclear plant, and the director of environmental protection and probabilistic risk assessment. Earlier in my career, I was a radiation safety officer and lecturer in the Department of Physics and Astrophysics at the University of Colorado and associate radiation safety officer and principal researcher at the University of Maryland Medical Center.

The Nuclear Energy Institute develops public policy for the U.S. nuclear industry. We represent 270 member companies with a broad spectrum of interests, including every U.S. utility that operates a nuclear power plant, their suppliers, fuel fabrication facilities, architectural and engineering firms, labor unions and law firms, radiopharmaceutical companies, research laboratories, universities and international nuclear organizations.

In my testimony today, I would like to discuss two issues: federal support for nuclear engineering education and the Environmental Protection Agency's (EPA) continuing duplicative regulation of Nuclear Regulatory Commission (NRC) licensees.

Ending Duplicative Regulation

This committee has cautioned EPA against duplicative regulation, but the agency has persisted, and this has been of ongoing concern to the nuclear energy industry.

The nuclear industry's highest priority is protecting public health and safety as well as the environment during all aspects of facility operation. Achieving this goal depends on clear and consistent federal policy that:

- assures protection of public health and safety;
- makes the best use of available public and private funds and resources; and
- helps build public trust and confidence in federal decisions and programs.

The current situation—one of duplicative and conflicting regulation by two federal agencies—works against those principles.

On behalf of the nuclear industry, I want to commend you, Chairman Walsh, Ranking Member Mollohan and the members of this subcommittee, for your continued oversight of EPA—in particular, the agency's administration of the National Priorities List, also known as the Superfund program. The committee has discouraged the allocation of funding for dual regulation by EPA of nuclear energy facilities that are undergoing decommissioning and license termination under NRC regulation. In doing so, the committee is holding the Administration accountable for regulatory reform policy by deterring regulatory activities that are "inconsistent, incompatible, or duplicative of those of other federal agencies."¹

NEI has testified before this subcommittee three times previously on dual regulation. Unfortunately, the situation has not changed. EPA has continued to interject itself into the NRC's regulatory process for site decommissioning and license termination. Further, EPA has threatened to list NRC-licensed facilities on the National Priorities List after such facilities have been decommissioned in full compliance with NRC regulations which, I should emphasize, were established to be fully protective of public health and safety.

EPA has inserted itself into the NRC's regulatory process through interaction with state agencies, the industry and the public in a manner that represents an

¹ Executive Order 12866, "Regulatory Planning and Review," at 58 Fed. Reg. 51735, dated October 4, 1993.

inefficient use of government resources and undermines public confidence in government and industry efforts to protect public health and safety.

Given the lack of progress over the past three years, in spite of the efforts of the committee, the industry believes that a legislative solution is needed to resolve the problem. In the interim, we respectfully offer several suggestions for the committee's consideration that may help avoid duplication in site cleanup regulation, and the imposition of unwarranted additional costs, until such legislation is enacted:

1. The committee should explicitly prohibit the EPA from using appropriated funds for dual regulation of NRC-licensed facilities.
2. The committee should reconsider its previous report language regarding an NRC-EPA Memorandum of Understanding (MOU) and provide definitive direction and guidance on what the MOU should address, as well as establishing a firm deadline for completion of the MOU.
3. If the EPA does not submit a report on the committee-directed review of the situation, the committee should consider initiating an independent audit of EPA actions and expenditures of resources with regard to the previous direction of the committee.

In 1998, the House Appropriations Committee adopted report language that recognized the NRC's ability to oversee the full remediation of nuclear facilities. This language specifically prohibited EPA from using federal funds to place NRC licensees on the National Priorities List.² However, there has been no evidence that EPA intends to comply with the committee's guidance and no indication that it will not persist in challenging the NRC's authority to regulate decommissioning and site cleanup activities.

In 1999, the Appropriations Committee expressed heightened concern about EPA actions. The committee pointed out that "any reversal of the long-standing policy of [EPA] to defer to the NRC for cleanup of NRC-licensed sites is not in the public interest and is not a good use of public or private funds."³ Further, the committee recognized that attempts at dual regulation by EPA have created legitimate stakeholder concerns regarding the authority and finality of NRC licensing decisions, the duration and cost of site cleanup, and the potential future liability of parties associated with affected sites.

² U.S. House of Representatives, Report 105-175 to accompany H.R. 2158.

³ U.S. House of Representatives, Report 106-286 to accompany H.R. 2684.

The committee also encouraged EPA and the NRC to enter into an MOU to clarify the circumstances for EPA's involvement at NRC-licensed sites—when requested by the NRC. The agencies were directed to report to the committee by May 1, 2000, on the MOU status. As the deadline passed, the two agencies advised the committee that there has been no substantial progress on the development of an MOU.

The General Accounting Office (GAO) reviewed the status of the MOU in June 2000 and examined the underlying issues associated with it. GAO acknowledged the committee's efforts to encourage the agencies "to clarify their conflicting regulatory roles related to nuclear facility cleanup and decommissioning."⁴ However, GAO concluded that "given the agencies' historical differences and lack of recent progress, without congressional intervention, they may not resolve their differences."

In its most recent report accompanying H.R. 4635,⁵ the committee said "that both agencies have not worked in good faith to resolve the problem of dual regulation by the federal government in NRC-licensed site decommissioning." The committee directed the EPA administrator "to undertake a review of EPA action on the MOU, the costs to NRC licensees associated with dual regulation by NRC and EPA on site cleanup, the potential costs associated with listing these facilities on the [National Priorities List], and options for resolving this issue by regulation, litigation or legislation." The committee set a deadline of March 31, 2001, for submittal of the report. We have no indication that the EPA has conducted the comprehensive review directed by the committee—despite the rapidly approaching deadline.

In previous testimony before this subcommittee,⁶ NEI has provided numerous examples of EPA's ongoing involvement in the decommissioning and cleanup of NRC-licensed sites. For example, EPA has participated in public meetings held at nuclear power stations regarding the implications of decommissioning. It has participated in meetings between reactor licensees and state regulators and directly with a state legislature. And the agency has continued its direct involvement with NRC reactor licensees through meetings and requests for radiological information.

Last year, EPA issued a guidance memorandum to its regional Superfund managers clarifying EPA's role under the Comprehensive Environmental Response,

⁴ GAO/RCED-00-152, "Radiation Standards: Scientific Basis Inconclusive, and EPA and NRC Disagreement Continues," June 2000.

⁵ U.S. House of Representatives, Report 106-988 to accompany H.R. 4635.

⁶ Testimony of the Nuclear Energy Institute to the U.S. House of Representatives Appropriations Subcommittee on VA-HUD and Independent Agencies, submitted on April 30, 1997, April 28, 1999, and April 12, 2000.

Compensation, and Liability Act (CERCLA) at facilities licensed by NRC.⁷ Unfortunately, this memorandum makes clear EPA's intent to continue to impose additional regulation on NRC licensees. The guidance memorandum:

- does not acknowledge that the NRC is the lead agency for regulating its licensees;
- does not place any constraint on EPA involvement at NRC sites when not requested by the NRC; and
- does not include any suggestion that EPA should consult or otherwise coordinate with the NRC on these issues.

With such glaring omissions, this document—now standing as EPA policy on the agency's role regarding NRC-licensed sites—stands in direct conflict with guidance this committee provided to EPA.

EPA persists in efforts that undermine the credibility of the NRC's regulatory process and erode the trust and confidence of public and government stakeholders in the NRC's health and safety standards.

A telling example occurred this past year in Maine. The Maine legislature last August passed a law⁸ to establish cleanup standards for decommissioning nuclear facilities patterned after EPA's continued undermining of the validity of NRC's cleanup standards. EPA was heavily involved in shaping this legislation. For example, the agency provided testimony and subsequent guidance to the state legislature on the proposed law and stressed its support of Maine's efforts and legislative intent "to mirror EPA's policies." EPA also sent a letter to the Maine legislature, clarifying differences between the standards promulgated in the act and EPA's standards that "may have arisen inadvertently during the drafting of the legislative language and [were] not discovered until after the legislation was enacted." The letter commits EPA to "working closely with [the state] to provide closure on the matter," although it notes that "it is not possible to further analyze the issue" until the final license termination plan, required by NRC regulations, is available from the nuclear power plant undergoing decommissioning in Maine.

Mr. Chairman, we do not dispute the propriety and legality of the actions taken by the state in carrying out its authority and responsibility to the people of Maine. In

⁷ OSWER No. 9272.0-15P, "Interim Final Guidance on Evaluation of Facilities Currently or Previously Licensed by NRC under CERCLA," dated February 17, 2000.

⁸ An Act to Establish Clean-up Standards for Decommissioning Nuclear Facilities, enacted by the Second Regular Session of the 119th Legislature of the State of Maine, Chapter 741, S.P.1084-L.D.2688.

fact, we view the active involvement of state and local government and the public as essential to the NRC regulatory process for decommissioning a facility. Indeed, NRC regulations expressly provide for such participation. However, we object to EPA's engaging in duplicative and conflicting regulatory efforts, taking every available opportunity to undermine the legitimacy of the NRC's regulatory process and standards.

There has been little progress by the two agencies in the past four years toward resolving this issue. Contrary to the guidance of this committee, EPA continues to engage in activities that impose duplicative and conflicting requirements. And, there has been no substantive progress in developing an MOU between the EPA and the NRC.

The industry continues to support the development of an MOU between the EPA and the NRC to clarify their respective roles and authorities in the decommissioning of NRC licensee facilities. In fact, we are hopeful that the recent change in leadership at EPA will lead to the kind of cooperative and constructive inter-agency dialogue that is necessary to produce such an MOU. The industry encourages the committee to work with the Bush administration and EPA Administrator Christine Todd Whitman to address this important issue. However, based on the record, the industry is skeptical that an MOU—even if one is concluded between EPA and NRC—will provide a lasting resolution to the issue of dual regulation. The agencies entered into a similar MOU in 1992,⁹ and EPA previously has deferred to the NRC as a matter of policy under CERCLA. It is the breach of that agreement between the two agencies that has created the existing dual regulation.

In our view, an MOU alone cannot solve this issue. Provisions in CERCLA set the stage for conflicting and overlapping authority between the NRC and EPA, which inhibits the remediation of NRC-licensed sites in a timely and economical manner. The conflict stems from the fact that the Atomic Energy Act gives the NRC responsibility to regulate the civilian use of nuclear materials. Under this authority, the NRC has overseen the successful remediation of more than 70 sites in a manner that fully protects public health and safety. By comparison, CERCLA assigns EPA primary responsibility to administer the remediation of contaminated sites included on the Superfund list.

The industry believes that the ultimate resolution of this issue requires legislative action. Clearly, the GAO has reached a similar conclusion following a detailed

⁹ Memorandum of Understanding between Ivan Selin, Chairman, USNRC, and William K. Reilly, Administrator, USEPA, on *Guiding Principles for EPA/NRC Cooperation and Decisionmaking*, dated March 16, 1992.

examination of this issue. However, we recognize that this committee is involved in the appropriation and oversight of expenditures of public funds, not in the authorization of statutory responsibilities of federal agencies. In that light, we respectfully offer several suggestions for the committee's consideration that may help avoid costly duplication of federal regulation of site decommissioning:

1. The committee should explicitly prohibit the EPA from using appropriated funds for dual regulation of NRC-licensed facilities.
2. The committee should reconsider its previous report language regarding an NRC-EPA MOU and provide more definitive direction and guidance on what the MOU should address, as well as establishing a firm deadline by which it should be complete.
3. If the EPA does not submit a report on the committee-directed review of the situation, the committee should consider initiating an independent audit of EPA actions and expenditures of resources with regard to the previous direction of the committee.

Supporting Nuclear Engineering Education

NEI also would like to take this opportunity to thank the committee for recognizing the importance of nuclear technology research and education. In last year's bill passed by Congress, the National Science Foundation was directed to review academic interest in nuclear engineering education and to provide recommendations on how NSF can provide support in this area.

To remain the global leader in nuclear technologies, the United States must ensure that the associated expertise and scientific infrastructures are maintained. Our nation must increase research in nuclear technologies, which have yielded extraordinary benefits in medicine, scientific research, electricity production, food safety and many industrial applications. It is essential to attract new scientists to these programs and maintain university programs to train them. The United States must stay on the cutting edge of these vital technologies.

When the National Science Foundation submits its report, NEI would like to have the opportunity to work with the committee to help assure that the appropriate level of support at NSF will be made available for nuclear technologies next year.

In addition, NEI is working on behalf of the industry to determine staffing and subsequent education needs for engineers, health physicists and technical tradespeople. The industry is also developing staffing strategies and

communications that encourage students to pursue careers in nuclear technology. A potential shortage of nuclear engineers, health physicists and professionals with expertise in other areas is a matter the industry takes very seriously.

On behalf of the nuclear energy industry, I would like to thank the committee for giving me the opportunity to address these important issues.