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COMSECY-05-0015

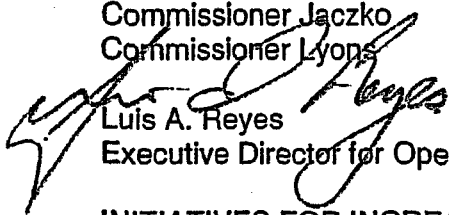
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

Approved. See attached
comments.

May 2, 2005


NTIS J. Diaz 6/22/05

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: 
Luis A. Reyes
Executive Director for Operations

SUBJECT: INITIATIVES FOR INCREASING AGREEMENT STATE
PARTICIPATION IN THE CONTROL OF SOURCES

On April 19, 2005, the staff briefed the Commission, in closed session, on a proposal for increasing Agreement State participation in the control of sources. The Commission requested the staff prepare a paper to provide the Commission with additional information about the staff's proposal. The Commission wanted this information before it would allow the staff to proceed to discuss this issue with the States. The purpose of this memorandum, and the attached paper, is to provide the additional information requested by the Commission to further inform the Commission's decision.

SECY, please track.

Attachment: As stated

cc: SECY
OGC
DOC
OCA
OPA
CFO

CONTACT: Andrew N. Mauer, STP
301-415-3962

Chairman Díaz's comments on COMSECY-05-0015, Initiatives for Increasing Agreement State Participation in the Control of Sources

I approve the staff's proposal to engage the Agreement States to find ways to increase their participation in controlling radioactive sources. This initiative is an important component of the NRC's efforts to stabilize the regulatory framework for safety and security in the current environment, and it will capitalize on the synergisms between these two mission areas to provide further assurance of adequate protection of public health and safety. In this regard, there is a need to strengthen safety requirements for the control of radioactive sources, and the staff's proposal will achieve this. Enhancing safety requirements to address emergent issues, in this case, the Nation's response to the terrorist attacks of 9/11, is not novel for the NRC; we have done it many times in the past, and would not hesitate to do so in the future.

The details associated with implementation of this initiative, such as promulgating regulations and ensuring the timely availability of funding, staffing, and training, will dictate its feasibility and schedule. Therefore, within sixty days, the staff should engage the Agreement States and determine whether this initiative is implementable and, if so, how many States will be willing and able to participate. In its report back to the Commission, the staff should also provide more specifics of how it proposes to increase Agreement State participation in the control of sources.

I believe that the most predictable path forward for this initiative will be for the NRC to assume the lead role in coordinating developmental activities and drafting documents, with active assistance by the States. As it proceeds with engaging the Agreement States, the staff should be mindful of the long term ramifications of its efforts. It will be crucial to the success of this project that there be clear alignment among stakeholders on compatibility criteria. Associated with this, the IMPEP program will need to be revised to assess whether Agreement State oversight of the safety performance of their licensees will satisfy the objectives of the materials licensee security requirements that have already been imposed or are pending. Also, OGC should work closely with the staff to identify and resolve legal aspects of this initiative as it progresses.

Consistent with the schedule for initially engaging the Agreement States, as discussed above, the schedule for finalizing and issuing the Protective Measures for Group 1 through 4 materials licensees should be delayed for sixty days. Like the PMs that have already been issued for other materials licensees, the Groups 1 through 4 PMs will need to be reviewed in the future as the Agreement State initiative matures. The staff should factor the content and objectives of these PMs into its discussions with the Agreement States. Finally, the staff and Agreement States should remain cognizant of the National Source Tracking System as it, and its associated rulemaking, develop over the next year and a half.



REQUEST REPLY BY: 5/16

COMSECY-05-0015

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

May 2, 2005

*I approved,
see attached
comments
E. Mc Jeffrey Jr.
5/13/05*

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: *Luis A. Reyes*
Luis A. Reyes
Executive Director for Operations

SUBJECT: INITIATIVES FOR INCREASING AGREEMENT STATE
PARTICIPATION IN THE CONTROL OF SOURCES

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Commissioner McGaffigan's Comments on COMSECY-05-0015

I do not agree with the staff's proposal for increasing the Agreement States' role in the security of radioactive sources. The proposal as presented would involve delaying the issuance of the Group 1-5 draft orders until such time as the States could issue identical orders or rulemakings to implement these same actions. As I have stated recently, I am concerned with the Agreement States' ability to issue these orders or rulemakings in less than several years. It has now been 3.5 years since September 11th, and we can not afford to wait any longer to issue these orders to these materials facilities. A Texas regulator recently told me that Texas had not signed a 274i agreement because they did not have sufficient resources to devote to performing security inspections. Many States are in similar circumstances.

NRC credibility in the interagency process (DHS, DOE, Office of the Vice President, etc.) is at stake. The NRC is under tremendous pressure from Congress and other agencies to have a complete and rational system in place for the protection of nuclear materials. If they do not have confidence that NRC is doing the right thing and covering all of the bases they may step in and do it for us. Although there are some Agreement States who are not very happy with the interaction with NRC, I am sure they will be even less happy if they have to deal with new Federal entities with which they do not have a longstanding working relationship. I also believe that we must fully fund the current implementation approach and not be dissuaded by a \$2 million and 26 FTE increment spread over 3 years. We can get these funds from Congress.

This is not to say that I do not see a potential role for the Agreement States in the future beyond the 274i agreement approach. I believe that it might be possible, once we have issued our orders under common defense and security, for the Agreement States to have a role. If, after our orders are issued an Agreement State can implement identical rules and requirements based on the State's consideration of health and safety matters, I can see the NRC (subject to verification) allowing the State to do the licensing and inspections for the facilities in their State to avoid dual regulation. This scenario would provide for security orders to be in place while the States develop their safety based regulations, preserving the NRC's control over common defense and security matters. I also would not object to the consideration of a one-time Federal grant program (perhaps from NRC off the fee base, or perhaps from DNDO) to foster increased State activities in these areas.

With our orders in place OGC can take a careful look at the legal restrictions that might apply to this proposal. I believe however, it is vital that the NRC continue to finalize the group 1-5 orders and issue them as soon as possible to ensure the safety and security of these materials at these sites. I believe we also must continue to move forward on the National Source Tracking System under our common defense and security authority. I just do not believe that the States will anytime soon be capable of the close to real time monitoring of the sources covered by the IAEA Code of Conduct. That is an NRC function every bit as much as the NMMSS system is.

EMG

UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001



May 2, 2005

*Approved, subject to
the attached comments.*

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: *Luis A. Reyes*
Luis A. Reyes
Executive Director for Operations

SUBJECT: INITIATIVES FOR INCREASING AGREEMENT STATE
PARTICIPATION IN THE CONTROL OF SOURCES

[Signature]
6/1/05

On April 19, 2005, the staff briefed the Commission, in closed session, on a proposal for increasing Agreement State participation in the control of sources. The Commission requested the staff prepare a paper to provide the Commission with additional information about the staff's proposal. The Commission wanted this information before it would allow the staff to proceed to discuss this issue with the States. The purpose of this memorandum, and the attached paper, is to provide the additional information requested by the Commission to further inform the Commission's decision.

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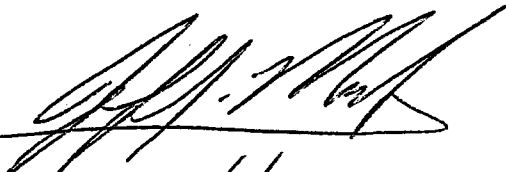
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CONTACT: Andrew N. Mauer, STP
301-415-3962

Commissioner Merrifield's comments on COMSECY-05-0015:

The staff has offered a thoughtful alternative to the Section 274i Agreement approach for increasing Agreement State participation in the control of sources. While I see the potential benefits of the approach suggested by the staff, I also recognize that this approach could present significant challenges to the Agreement States in meeting the Commission's expectations and deadlines. That being said, I believe the Agreement States should be given the opportunity, as is requested in the paper, to provide feedback to the NRC on this alternative and the related implementation issues. The staff should be directed to discuss expeditiously with the Organization of Agreement States and the individual Agreement States the viability, timing and strategies for implementation of this alternative approach. The discussions should focus on all of the Agreement States' ability and willingness to implement timely and adequate legally binding requirements in a manner and timeframe consistent with the Commission's expected deadlines. The staff should also discuss long term implementation of necessary inspections and any implications these required activities might have on Agreement State resources.

I would caution the staff to be circumspect in its discussions with the Agreement States regarding the extent of the requirements that could be implemented under this proposal, as we are still considering the legal ramifications of this alternative approach. In the interest of timely resolution of our path forward, however, I am willing to allow discussions to take place at this stage of the process. The staff should report the results of these discussions with the Agreement States to the Commission within thirty days of the date of the staff requirements memorandum to enable the Commission to determine whether this alternative approach is viable or whether the current course of the Commission issuing security orders to all NRC and Agreement State materials licensees and the Agreement States inspecting their licensees under the Section 274i Agreements continues to be the preferred Commission option.



6/1/05



ALHULWI ALI LI DI: 5/16

COMSECY-05-0015

UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

REVISED

May 2, 2005

Disapproved. See attached
comments.

[Signature] 5/2/05
Gregory B. Jaczko Date

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: *[Signature]*
Luis A. Reyes
Executive Director for Operations

SUBJECT: INITIATIVES FOR INCREASING AGREEMENT STATE
PARTICIPATION IN THE CONTROL OF SOURCES

On April 19, 2005, the staff briefed the Commission, in closed session, on a proposal for increasing Agreement State participation in the control of sources. The Commission requested the staff prepare a paper to provide the Commission with additional information about the staff's proposal. The Commission wanted this information before it would allow the staff to proceed to discuss this issue with the States. The purpose of this memorandum, and the attached paper, is to provide the additional information requested by the Commission to further inform the Commission's decision.

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CONTACT: Andrew N. Mauer, STP
301-415-3962


Commissioner Jaczko's comments on COMS-05-0015
Initiatives for Increasing Agreement State Participation in the Control of the Sources

I disapprove of the staff's proposal for increasing Agreement State participation in the control of sources (GOMSECY-05-0015). As Commissioner McGaffigan noted in his comments on this issue, modifying the approach to this issue as recommended by the staff would invoke delays in issuing the protective measure orders for materials licensees. It is crucial that the Commission move forward on issuing these orders, which fall clearly under the common defense and security mission of the Nuclear Regulatory Commission (NRC). Section 274m of the Atomic Energy Act explicitly reserves this authority to the Nuclear Regulatory Commission under the agreement state program.

The NRC has a responsibility to impose security requirements because of the real security threats that currently exist. I appreciate the efforts of the staff to develop an alternative approach that seeks to involve the agreements states more fully; however, the Atomic Energy Act does not provide the explicit authority for the agreement states to regulate licensees on matters of common defense and security. Any effort to accomplish this, I believe is a misuse of resources that could be better spent completing and issuing these orders.

The staff in the underlying paper provided a thoughtful account of the advantages and disadvantages of the current implementation approach. In reviewing this list, there is only one listed item that clearly compelled my decision: the current implementation "[p]rovides a timely, quick and enforceable method of enhancing security." No other reason should be needed to move forward with the current implementation.

I encourage states that wish to participate to utilize the Section 274i agreements, but otherwise I believe the NRC must move quickly to complete the current implementation approach.



Gregory B. Jaczko



UNITED STATES
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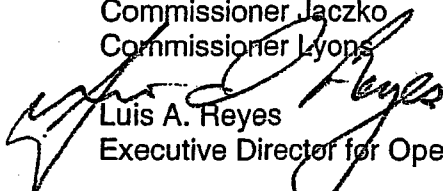
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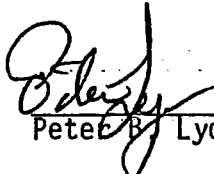
MEMORANDUM TO:

Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

Approved with
attached comments.

FROM:


Luis A. Reyes
Executive Director for Operations

 5/3/05
Peter B. Lyons

SUBJECT:

INITIATIVES FOR INCREASING AGREEMENT STATE
PARTICIPATION IN THE CONTROL OF SOURCES

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Commissioner Lyons's Comments on COMSECY-05-0015

I approve the staff's request to discuss with the Agreement States an approach which would allow the States to have greater participation in the oversight of control and security of radioactive material. I know there is a concern that the proposal as presented would involve delaying the issuance of the Group 1-5 draft orders until such time as the States could issue identical orders or rulemakings to implement these same actions. In my opinion, having waited more than 3 ½ years since September 11, adding several more months to let the Agreement States set the infrastructure to issue orders should not be considered a deterrent. It is evident that the Organization of Agreement States (OAS) Board considers that NRC issuing Security Orders to licensees in Agreement States is a form of dual regulation, because the same licensees are being regulated by both NRC and the Agreement states. Also OAS has requested that other approaches be considered that would permit States to implement additional security and control enhancements under their Section 274b Agreements.

I believe that it is in the best interest of both NRC and Agreement states to pursue this initiative. It supports the integration of safety, security, and emergency preparedness, in a manner consistent with the NRC's strategic goals and the complementary nature of these requirements. It will further enhance the longstanding partnership with the Agreement States for protecting public health and safety and ensuring safe use of radioactive materials under Section 274b of the Atomic Energy Act. It may maximize efficiency of inspection resources and reduce travel costs.

My approval grants staff up to 2 months to discuss the proposal with the Agreement States and OAS and determine if the Agreement States and OAS are able to implement such a proposal in a short period of time and report back the results to the Commission. In discussion with OAS and Agreement States, staff should make it clear that any final decision to proceed with issuing the protective measures is subject to legal review.