



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

SEP 28 1988

MEMORANDUM FOR: Victor Stello, Jr.
Executive Director for Operations

FROM: William J. Olmstead
NRC LSS Negotiating Representative

SUBJECT: LSS ADMINISTRATOR

Pursuant to your request, the NRC Licensing Support System Negotiating Team has developed a recommendation on the organization within NRC that should serve as the LSS Administrator. Based on a consideration of the responsibilities of the LSS Administrator set forth in the draft proposed LSS rule and the selection criteria listed below, the negotiating team recommends that a new Office of the LSS Administrator be established. While I believe there are a number of ways to approach the selection issue, the negotiating team's recommendation is reasonable. The new Office could report to the Commission through one of the existing Directors who does not otherwise supervise functions directly related to adjudicatory/licensing issues, such as the Director of the Office of Governmental and Public Affairs (Attachment 1).

The negotiating team believes that the two fundamental issues involved in the selection of the LSS Administrator are (1) the ability to address the needs and concerns of the external users of the LSS and to be seen as neutral and effective by those users, and (2) the ability to address the needs and concerns of offices within the NRC who will be affected by the LSS and to be seen as neutral and effective by those offices. The negotiating team strongly believes that the LSS Administrator should be independent, and that the implementation of the LSS Administrator's responsibilities should not be subordinate to any particular interests, either within or outside the agency. Therefore, the negotiating team recommends a new organization as the preferred option. However, in order to facilitate management accountability, the negotiating team recommends that the LSS Administrator should report to the Commission through the Director of the Office of Governmental and Public Affairs. The representative on the negotiating team from the Office of Governmental and Public Affairs disagrees with this part of the recommendation (Attachment 2).

In addition, the representative from the Licensing Board panel, although having "no fundamental objection" to the recommendation "that a separate organizational unit be established to house the LSS Administrator," did not concur in the negotiating team's recommendation because of "the failure to come to grips with... the reconciliation of the legitimate interests of the various NRC offices which are concerned with the LSS." (Attachment 3). I believe that the essence of the negotiating team's recommendation directly

addresses the issue of how to best reconcile user interests and, therefore, I disagree that the negotiating team failed to come to grips with this issue. In this regard, see the attached memorandum from Chief Judge Kohl, ASLAP (Attachment 4). If the concern of the Licensing Board Panel representative is with how the interests of the various NRC offices will be accommodated by the LSS Administrator, I would note that the negotiating team has recommended the creation of an internal steering committee to provide coordinated advice to the LSS Administrator on the internal aspects of LSS implementation.

Responsibilities of the LSS Administrator

Proposed Section 2.1011 establishes the position of LSS Administrator who is responsible for managing, operating, and maintaining the LSS. The LSS Administrator is to be appointed by the Commission no later than sixty days after the effective date of the final LSS rule. Under the proposed rule, the LSS Administrator cannot be any person or organizational unit that either represents the U.S. Nuclear Regulatory Commission staff as a party to the high-level waste licensing proceeding or is a part of the management chain reporting to the Director of the Office of Nuclear Material Safety and Safeguards. Therefore, the LSS Administrator cannot be NMSS or the Hearings and Enforcement component of the Office of the General Counsel.

Proposed section 2.1011 sets forth the responsibilities of the LSS Administrator including providing the necessary personnel, materials, and services for the operation and maintenance of the LSS; advising DOE on the design of the LSS, including procurement of software and hardware; establishing standards for document entry and entering the documentary material submitted pursuant to proposed section 2.1003; and providing LSS access to LSS participants and the public. In addition, the LSS Administrator is responsible for evaluating and certifying DOE compliance with the document entry requirements of the proposed rule. In order to fulfill the Administrator's general responsibilities under the proposed rule, the LSS Administrator will also need to evaluate the compliance of other LSS participants including the NRC staff.

Proposed section 2.1013 establishes procedures for the electronic submission of pleadings during the hearing, or during the pre-license application phase for practice before the Pre-License Application Licensing Board under proposed section 2.1010, for the electronic transmission of Board and Commission issuances and orders, as well as for on-line access to the LSS during the hearing. The administration of this system of electronic filing will also be the responsibility of the LSS Administrator.

Selection Criteria

The negotiating team developed the criteria to guide the selection process in the context of the following objectives--

- the basic rationale for the LSS, i.e., timely and effective review of the DOE license application; and
- the effective execution of the LSS Administrator's responsibilities under the proposed LSS rule.

The criteria are--

1. Access to the following areas of expertise or knowledge -- technical aspects (hardware, software, telecommunications), legal aspects (discovery, adjudicatory process), records management, provision of information (FOIA, PDR), docketing, budget preparation, procurement, and the regulatory and institutional framework for HLW licensing. In-depth knowledge of all of these areas does not need to reside in the LSS Administrator's staff as long as the LSS Administrator has ready access to the NRC organizations that possess these areas of expertise and knowledge. However, the LSS Administrator needs to have sufficient resident and contract resources and expertise in these areas to make informed decisions on LSS development, implementation and operation. In addition, possession of any one area of expertise should not be the determinant criterion for selecting the LSS Administrator.
2. An organizational framework conducive to the balanced accommodation of the needs of the multiple users of the LSS, both internal and external. For example, the organizational framework should not establish any predilection towards serving the interests or objectives of one set of LSS users, at the expense of another set of users.
3. Sufficient stature and authority to carry out the responsibilities established in the LSS rule, including the management of LSS resources and personnel.
4. An organizational placement that does not compromise the ability of the LSS Administrator to make and implement decisions in an independent and objective manner.
5. Management and administrative efficiency, including costs of implementation.

The Selection Process

After developing the criteria for selection of the LSS Administrator, the negotiating team evaluated the following organizational options against the selection criteria--

- ASLBP
- SECY

- GPA
- ARM
- A new organization

Criterion 1 - Knowledge and expertise

As a reflection of ARM's technical expertise and functions, ARM scored highest among the organizational options on this criterion. However, the negotiating team believes that ARM support will be available to any organization selected as the LSS Administrator. In addition, it is anticipated that the execution of most of the LSS Administrator's routine responsibilities will be accomplished by contract. The negotiating team believes that in-depth expertise in the technical area, or in any of the other relevant areas of expertise or knowledge, should not be the critical factor for selection of the LSS Administrator, but rather should be balanced with other considerations. Access to these areas of expertise and knowledge will be sufficient to allow the LSS Administrator to perform his or her responsibilities. However, the persons ultimately selected to serve as LSS Administrator and his or her staff should have sufficient individual expertise to make informed decisions on LSS development and implementation.

Criterion 2 - Accommodation of user needs

The creation of a new organization for administration of the LSS scored the highest in this category. Because the LSS Administrator must accommodate the needs of both external users (i.e., parties and potential parties to the HLW licensing proceeding, as well as the general public) and the needs of internal users (i.e., NMSS, ASLBP, ASLAP, OGC, and SECY), the negotiating team believes that placement of the LSS Administrator outside of any user offices will best facilitate a balanced accommodation of all LSS user interests.

Criterion 3 - Stature and authority

The creation of a new organization also scored the highest in this category. The negotiating team believes that a new office, dedicated solely to the implementation of LSS responsibilities, will provide the most assurance that the LSS Administrator will be able to implement his or her responsibilities. It would also emphasize to the external users of the LSS the importance that the Commission places upon the implementation of these responsibilities. This will also provide credibility for the LSS Administrator in relations with Congress, and the LSS Advisory Review Panel.

Criterion 4 - Independence

The new organization again scored the highest in this category. The negotiating committee believes that, to the extent practicable, the organizational placement of the LSS Administrator should avoid any possible

constraints on the ability of the LSS Administrator to carry out his or her responsibilities effectively. Creation of a new office avoids any potential interference, either perceived or real, with the LSS Administrator's independence or objectivity.

Criterion 5 - Efficiency and cost

GPA scored the highest in this category. Under this criterion the negotiating team considered factors such as the value of integrating most agency document management functions in ARM; the natural tensions between various existing offices, which could create inefficiencies in LSS administration if the LSS Administrator is placed in a particular office; the additional overhead costs to establish an entirely new, separate office; management accountability; and management efficiency. Although the creation of a new office scored the lowest in this category due to the additional expense of creating a new office, the negotiating team believes that any additional cost would be outweighed by the positive attributes of a new office. Further, having the new office report to the Commission through GPA will take advantage of the efficiencies in the existing GPA structure.

Summary

The negotiating team believes that the most important factors in the choice of the LSS Administrator are the ability and willingness to accommodate user needs (Criterion 2), sufficient stature and authority (Criterion 3), and independent decision-making capability (Criterion 4). The creation of a new office rated the highest of any of the organizations evaluated in these categories. Accordingly, the negotiating team recommends the creation of the Office of the LSS Administrator.

Although the negotiating team believes that a new office is the most effective way to implement the responsibilities of the LSS Administrator, the negotiating team was also concerned with the issue of the accountability of the LSS Administrator to a higher level of management. The option of the new office reporting to the EDO was rejected because of (1) the extensive management responsibilities currently assigned to the EDO, and (2) any potential negative perceptions resulting from the LSS Administrator reporting to the same supervisor as does the NRC office that will be a party to the HLW licensing proceeding (NMSS). Furthermore, the negotiating team believes that having the LSS Administrator report to the Commission as a collegial body would be impractical, and that there is little applicable precedent for having the new office report directly to the Chairman. Therefore, the negotiating team recommends that the LSS Administrator report to the Director of the Office of Governmental and Public Affairs (see Attachment 1). This will provide a single point of management accountability and will avoid the potential difficulties noted above in having the LSS Administrator report to the EDO, the Commission, or the Chairman. It also avoids the problems discussed above in placing the LSS Administrator in an NRC office that would

be a principal user of the LSS, or in an office where the independence of the LSS Administrator might be compromised, or be perceived to be compromised.

The negotiating team recommends that the Director of GPA be given the authority to hire and fire the LSS Administrator, the responsibility to evaluate the performance of the individual selected as the LSS Administrator, and the supervisory responsibility for the LSS Administrator's budget. However, substantive program decisions on the implementation of the LSS would be made by the LSS Administrator.

The negotiating team has included a draft organizational chart for the Office of LSS Administrator (Attachment 5). It is anticipated that the LSS Administrator would operate with a small staff of approximately five professionals. The chart also identifies an internal steering committee of affected NRC offices to advise the LSS Administrator on the internal aspects of the implementation of the LSS, particularly on assuring that the needs of NRC user offices will be effectively met.

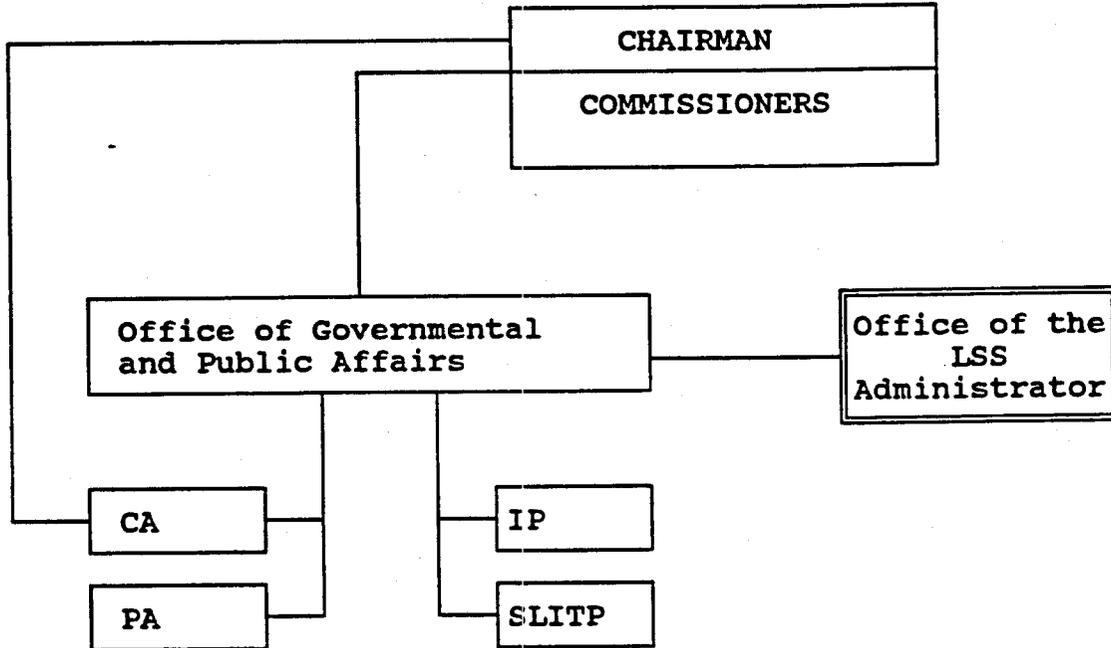


William J. Olmstead
NRC LSS Negotiating Representative

Attachments:
As stated

cc w/ attachments:
S. Chilk, SECY
B. Paul Cotter, Jr., ASLBP
H. Denton, GPA
C. Kohl, ASLAP
W. McDonald, ARM
W. Parler, OGC
H. Thompson, Jr., NMSS

Office of the LSS Administrator
within Nuclear Regulatory Commission



September 22, 1988

MEMORANDUM FOR: Chip Cameron
Office of the General Counsel

FROM: Rosetta Virgilio *Rosetta Virgilio*
State, Local and Indian Tribe Programs
Office of Governmental and Public Affairs

SUBJECT: DRAFT CONSENSUS RECOMMENDATION
ON THE LSS ADMINISTRATOR

Based on discussions I have had with SLITP management *only?* we disagree with the NRC LSS Negotiating Team's draft consensus recommendation. The Team recommends that a new Office of LSS Administrator be established and report to the Commission through the Director of the Office of Governmental and Public Affairs (GPA). We are not in agreement that GPA is the most qualified Office to bear management responsibility and accountability for the proposed new Office of LSS Administrator for the following reasons.

1. GPA does not have a high (or for that matter, even a moderate) degree of expertise in the following areas: technical (hardware, software, telecommunications), legal (discovery, adjudicatory process), records management, provision of information (FOIA, PDR), docketing, budget preparation, procurement and regulatory and institutional framework for HLW licensing. It is paramount that the organization through which the proposed new office would report have a sufficient degree of experience in the majority of the areas named. Although NRC has a number of talented people from which to draw upon, it is not thought to be the most efficient approach. The most logical and experienced Office to make informed and timely decisions in the above areas appears to be either ARM or SECY.

2. It goes without saying that one of the prime responsibilities of the LSS Administrator is to accommodate the needs of the multiple users of the LSS. ARM currently possesses the knowledge and experience in dealing with users needs, both internally and externally, and is in a much better position to work with the LSS Administrator to anticipate and handle users requests. GPA would provide counsel in politically sensitive areas and, along with other NRC offices, participate in the proposed internal steering committee.

3. The stature and authority of an independent Office of LSS Administrator would naturally be recognized by other NRC Offices regardless of where it reports. Its responsibilities are spelled out in the proposed rule and carries a weight and respect all its own. *Should be is different than traditional reality*

4. The LSS Administrator would not be subject to interference with his/her independence or objectivity if it is an independent office. There is the potential, however, for GPA to become involved in

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where

Not really independent if in structure of one of the users

who - States, Indians

potential conflicts with its constituents and this would not be an ideal situation for either GPA or the LSS Administrator to deal with.

by whom

5. It is anticipated that the cost of setting up a separate Office of LSS Administrator may not be desirable and rejected, regardless of the fact that DOE would be providing Nuclear Waste Funds for LSS administration. It is further anticipated that the Director, GPA would most likely be nominated as the LSS Administrator by default. It is felt that GPA is not in the best position to determine management accountability and efficiency of the LSS Administrator.

do not set the points here

It is recognized that "...the natural tensions resulting from different charters of existing offices..." has forced the negotiating team to come up with a recommendation of an LSS Administrator that is not based on knowledge and experience in the field. We feel it would not be in the best interests of the agency and the users of the LSS to make such a recommendation on this basis.

SEPARATE STATEMENT OF JUDGE FRYE

I find that I am unable to concur in the Negotiating Team's recommendation. While I have no fundamental objection to with their decision to recommend that a separate organizational unit be established to house the LSS Administrator, that unit to report to the Director of GPA, I do quarrel with the Team's failure to come to grips with the central issue raised by this controversy. That issue concerns the reconciliation of the legitimate interests of the various NRC offices which are concerned with the LSS. This issue was plainly brought out by the comments on ARM's August 9 proposed Commission paper and in the subsequent meeting called by the EDO in an effort to resolve this controversy. Some of the relevant comments on ARM's proposed paper were:

...irrespective of who is ultimately selected as the LSS Administrator, ARM, SECY, and ASLBP will have to coordinate with and support one another if the LSS is to work well and the Commission is to have any chance of meeting the statutory deadline for the proceeding.

Judge Kohl's August 16 Memorandum, p.5. Judge Kohl concludes that a separate office should be established and staffed with a core of experienced people from, among others, ARM, SECY, and ASLBP.

...we suggest adding a discussion on how internal coordination of LSS implementation efforts among

the relevant NRC offices will be accomplished. As the draft paper recognizes, several NRC offices will be affected by LSS operation and several will be required to provide the support necessary for the effective implementation of the LSS. One way to address this issue might be an internal steering committee which would meet regularly to advise the LSS Administrator on implementation issues. The committee could be the means by which relevant office views are communicated and coordinated.

Mr. Parler's August 19 Memorandum, pp.1-2.

The LSS is being created to support a single, first-of-a-kind case which is severely constrained by time and vitally important to national energy policy. The needs of that case must be paramount. Other Commission concerns such as a uniform docketing system and the automation of the Commission's record keeping system must be secondary. However, those needs may be served by consultation and support.

The LSS is inextricably intertwined with the judges and parties. ASLBP can administer the LSS at least cost with maximum efficiency. To house the LSS Administrator in other than the ASLBP is to invite the kind of administrative and quality control delays in the High Level Waste Licensing proceeding that the Commission and the country simply cannot afford.

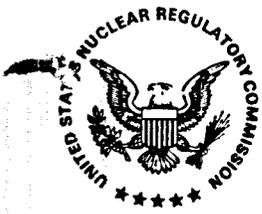
Judge Cotter's August 22 Memorandum, p. 7.

Clearly at least three Commission offices, ARM, SECY¹, and ASLBP, have very real institutional interests in the operation of the LSS. Equally clearly, those interests may not always coincide. And if the issue of how to accommodate

¹In his August 24 Memorandum, Mr. Chilk also recognized this issue but concluded that it should not delay the selection of the LSS Administrator. See pp. 3, 4.

those potentially conflicting interest had not been previously brought to the fore, Judge Cotter's August 22 Memorandum presented it and demanded its resolution now. Moreover, each office which commented on ARM's August 9 proposal recommended a different way of reconciling these potential conflicts.

Nonetheless, in two lengthy sessions, the Negotiating Team devoted scarcely any attention at all to this issue. The determination to recommend the establishment of a steering committee advising the LSS Administrator to deal with this problem was made by the NRC Negotiator following my objection that the issue had not been addressed. Following that meeting I was informed that the steering committee would be chaired by the NRC's representative on the LSS Advisory Panel. These important points were not discussed by the Team. Another, equally plausible way to reconcile potentially conflicting interests would be to provide for Deputies to the Administrator for litigation, licensing, and public access. Although this suggestion was raised at the meeting and is similar to one made by Judge Kohl in her August 16 Memorandum, it was not discussed at the meeting. Unfortunately, the Team has ducked the principal issue which it was asked to address. Therefore, I do not concur in the Team's recommendation.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL PANEL
WASHINGTON, D.C. 20555

ATTACHMENT 4

September 27, 1988

To: LSS Negotiating Team

From: Chris Kohl *ck*
ASLAP

Re: DRAFT CONSENSUS RECOMMENDATION ON THE LSS
ADMINISTRATOR

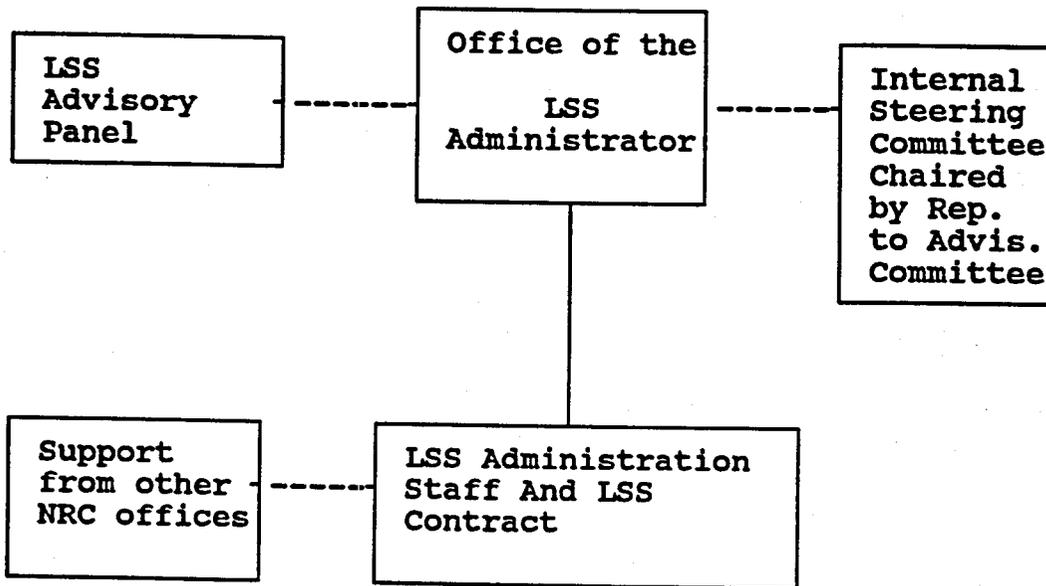
John Frye's separate statement objecting to the draft consensus recommendation on the LSS Administrator refers to my August 16 memorandum. Lest my position be misunderstood, some clarification is necessary.

In my August 16 Memorandum to Mr. McDonald, I suggested consideration be given to establishing a separate Office of the LSS Administrator and staffing it "with a core of experienced people from ARM, SECY, ASLBP, and other offices within and outside the NRC." By this staffing suggestion, I simply meant that there are individuals in the named offices and elsewhere who have, in the aggregate, the skills and experience necessary to administer the LSS effectively, and who would be potential applicants for positions in the newly created office. I did not contemplate or mean to imply that such individuals would remain employees of ARM, SECY, ASLBP, etc., essentially serving dual roles or details as Deputies to the LSS Administrator. Indeed, I believe such an arrangement would be wholly unworkable and contrary to the criteria developed by the Negotiating Team for selection of the LSS Administrator (especially criteria 2, 4, and 5).

I also have to disagree with John that we "ducked the principal issue." He defines that issue as "the reconciliation of the legitimate interests of the various NRC offices which are concerned with the LSS." I think the selection criteria developed by the Negotiating Team and our application of them to the five considered options reflect serious, almost predominant attention to that issue. Further, our specific mandate was to recommend an office (existing or new) to serve as LSS Administrator. We have done so, albeit not unanimously. In performing that task we necessarily had to consider the upward chain of command (i.e., to whom the LSS Administrator would report), but it

was neither necessary nor within the scope of our instructions to consider the internal structure or policy-making mechanism of the LSS Administrator's office. That matter is for another day and perhaps for the particular individual who is ultimately selected as Administrator.

Office of the LSS Administrator



----- advisory and support function