DSI-13
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NON-DESTRUCTIVE TESTING MANAGEMENT ASSOCIATION

December 2, 1996

Mr. John C. Hoyle
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Att.: Chief of Docketing and Services Branch

Subject: PR-157 Strategic Assessment Initiative, Written Testimony

I. Introduction

The Non Destructive Testing Management Association (NDTMA) is pleased to provide comments to the Nuclear Regulatory Commission for review as part of their Strategic Assessment Initiative. The NDTMA was formed to provide a forum for the open exchange of managerial, technical, and regulatory information critical to the successful management of Non Destructive Testing personnel and activities. Its membership is approximately 150 companies operating in both Agreement and NRC states. Our comments will touch on three DSI papers; #13 - The Role of Industry, #23 - Enhancing Regulatory Excellence, and #12 - Risk-Informed, Performance-Based Regulation.

II. The Role of Industry (DSI #13)

The role of industry, and specifically the role of the radiography industry in NRC rulemaking activities has been a cause of great concern amongst the members of NDTMA. The existing operation, as identified in DSI # 13 has evolved absent an overall explicit policy statement. This has led to inconsistent reliance on industry viewpoints, and often times a complete disregard for the viewpoints of the regulated community. NDTMA recognizes that the agency must remain independent in its decision making, but feel that the flaw lies in the data collection process and not with the decision making.

While NDTMA has been involved with a variety of rulemaking efforts ranging from participation in agreement state workshops to commenting on proposed rules affecting 10 CFR 34, we do not feel that substantive input has been sought out prior to developing a proposed rule. The most recent changes to 10 CFR 34 have resulted in a solicitation of public comments through the Federal Register and public workshops. All of these actions have taken place after the NRC has reached a preliminary viewpoint however. Seeking comments on a proposed rulemaking, does not offer substantive industry input, and is often viewed as a formality in the NRC's rulemaking process.

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To rectify this problem, we would suggest two additions to the rulemaking process:

1) For substantive rulemakings such as an overhaul of 10 CFR 34, it is necessary to gather input through an advanced notice of proposed rulemaking or an enhanced participatory rulemaking process. This allows a meaningful discussion between industry groups and the agency staff to take place, before any decisions are made as to the direction the agency should pursue an issue. As one of the primary stakeholders in the Non Destructive Testing Industry, NDTMA can offer expertise and advice up front to develop a rulemaking that achieves its goal, maximizes efficiency, and is reasonable to implement.

2) DSI # 13 discusses the fact that "the role of industry groups in the regulation of nuclear materials is relatively fragmented in comparison to that of the power reactor industry. No broad industry-wide advocacy or technical assistance group works to represent the interests of all materials licensees." NDTMA believes that the problem is even more focused than the interests of all materials licensees. The agency relies on several advisory committees to seek advice on technical topics. These advisory committees include issues such as reactor safety, nuclear waste, and the use of medical isotopes. NDTMA would like to see the NRC, under the Federal Advisory Committee regulations, create an industry advisory committee to assist it in developing appropriate regulations for 10 CFR 34. This advisory committee would be made up of experts in the field of industrial radiography safety and could provide the agency with a level of expertise that is not currently available amongst the staff.

To further augment this process, consistent with option four in DSI # 13, the NDTMA is willing to explore with NRC staff how the utilization of standards and guides, developed within industry (i.e., ANSI N432-1980 standard), can be refined and translated into the rulemaking process.

III. Increase Accreditation and Certification of Licensee Activities (DSI #13)

The NRC mentions several times in DSI # 13 that one example of an industry group working with the agency is the American Society for Non-Destructive Testing, in cooperation with NRC, developing a program for certifying radiographers that maybe incorporated into 10 CFR Part 34.

We encourage the NRC to move in the direction of accreditation and certification programs developed by industry but would like to take this opportunity to highlight some of our concerns about implementation of such programs. With NRC preparing to require licensee participation with the radiographer safety certification rule, NDTMA is concerned about the level of support and enforcement that the agency is preparing to implement. We are convinced that enforcement will not be truly effective unless it places a high level of accountability squarely on the shoulders

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of the radiographers to comply with basic safety requirements, especially the need to perform surveys. The bottom line is that without effective enforcement, including support to all certifying entities during due process hearings for severe violations by individuals, the certification program is not cost effective to industry. Simply requiring certification without enforcement could lead to companies skirting the requirement without fear of retribution, thus creating an economic disadvantage to those who comply.

In addition, we feel that the NRC should mitigate the level of civil penalties for those licensees with good radiation safety records, and escalate the nature, character, and extent of penalties on licensees with very poor worker radiation safety records. We are aware that the staff has flexibility in this area and we would encourage the agency to expand the range so that civil penalties for the really bad performers could be higher, and more of the good performers would not suffer civil penalties. This concept has been discussed in previous workshops with NRC and we would urge a reexamination of the enforcement policy to bring about this change.

In looking at enforcement of accreditation programs as well as a shift to performance based regulations, NDTMA feels that it is also necessary to review the definitions of good and bad performers. Our organization is concerned that NRC will simply evaluate licensees on the basis of the number of violations without taking into consideration the number of employees. We feel that it is obvious that a company with more certified radiographers could see a higher rate of violations. A per capita system, taking into account the severity of the violation, and the frequency of any one violation may be the best way to approach this issue. This is one example of where the radiography industry could continue to work with the agency in defining some of these parameters.

We are also concerned about the long-term problems associated with the reciprocity and reciprocal recognition of radiography licenses, certifications and product registrations throughout the NRC and Agreemnent State jurisdictions.

IV. Use Of Cost Benefit Analysis In Developing Regulations (DSI #12 & 23).

It is imperative that the NRC define objective safety goals for the radiography industry in general and for new proposed rules in particular. It is not possible to evaluate the cost efficiency of a proposed rule, nor perform a periodic review of the effectiveness of a rule, without measurable safety goals. The need to develop objective goals will highlight the need for the NRC to collect reliable and relevant radiography safety data. The current body of available data is not adequate.

NDTMA believes that the main safety violation is willful failure to perform proper surveys. The majority of major safety violations in the industry are committed by only a few radiographers

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and radiography licensees which fosters additional regulations. These additional regulations show little benefit to the industry or demonstrate any decline in the number of safety violations.

The NDTMA would like to close by expressing concern that the NRC may be implementing regulations that are unnecessary rather than focusing on the enforcement of those regulations already in place. We have previously expressed concern about the implementation of the alarming ratemeter rule. When it was proposed in 1989, it was opposed by industry based on safety concerns. Today the opposition is greater. It is even opposed by the vast majority of agreement state radiation control programs. Ratemeters are subject to false-positive indications, false-negative indications, and there is no requirement to verify that the instrument is operating properly. The greatest safety concern is that mandatory use of the ratemeter influences workers to refrain from use of the far more reliable survey meter.

A recent survey by San Jose State University classified radiation technologists as one of the safest occupational professions. We agree that in the hands of properly trained individuals, industrial radiography is a relatively low-risk activity. We support the concept of Risk-Informed, Performance-Based Regulations. We unfortunately are reaching the point where additional regulations are being added by the agency without any data that shows the regulations will have a beneficial effect. With a large number of small businesses being affected by these regulations, we urge the NRC to utilize accurate cost-benefit data as well as input from the industry affected before implementing new regulations. We would like to work with the agency to make this happen.

V. Conclusion

The NDTMA, a professional organization established almost 30 years ago, has witnessed the evolution of Non Destructive Testing. This change, coupled with an understanding of the risks posed by the peaceful uses of radiation, has integrated this technology into society. It is now the job of the NRC and the radiography industry to work together to develop and implement regulations that will truly protect the public health and safety. NDTMA is willing to offer the expertise of its members to assist NRC in achieving this goal and hope that the comments provided will lead to a directional change within NRC. For further information on any of the topics discussed in this testimony, please feel free to contact me directly. I can be reached by phone at (504) 464-9471.

Sincerely,

R. D. (Donny) Dicharry, Chairman
Government and Industry Affairs Committee

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