



DSI-13

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State of Louisiana Department of Environmental Quality

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November 21, 1996



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

ATTN: Chief of Docketing & Services Branch

Dear Mr. Hoyle:

This letter is provided as the Louisiana Department of Environmental Quality, Office of Air Quality and Radiation Protection's comments on the Direction Setting Issues (DSI) included in the NRC's strategic assessment and rebaselining initiative. In addition, Louisiana concurs with comments that were provided by the Organization of Agreement States (OAS) and the Conference of Radiation Control Program Directors (CRCPD) during the October 23-25, 1996, regulator's meeting and public conference. Louisiana also provided verbal comments during the regulator's meeting, which were included in the summary of that meeting.

In response to the question raised in DSI 2, "Oversight of the Department of Energy," (DOE) it is recommended that DOE should not regulate itself. The NRC should assume regulation of DOE, including decontamination activities. DOE has a budget and staff for their self-regulation; therefore, the resources necessary to regulate DOE could be obtained by a transfer of these funds and staff from DOE to NRC. This would not require a fee increase on the NRC licensees. As an additional benefit, the DOE staff will be most knowledgeable of the problems to be addressed. In the comments presented by the OAS, it was also suggested that NRC be prepared to discuss the role that might be played by the Agreement States in the oversight of the Department of Energy. Particular attention should be given to DOE's activities which directly or indirectly affect states.

One comment characterized the tone of DSI 4 as presenting the states as dependent on NRC. This may not have been the intent, but it does seem to be the tone of the paper. Such portrayal of the relationship between the NRC and the Agreement States is incorrect. The relationship has been, and continues to be, one of mutual benefit. Louisiana certainly believes that it has provided as much assistance as it has received, and that the resources the NRC has expended on this Agreement State has more than been balanced by the contribution that the state

*Note: OAS commented on ALL the DSIs



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has made to the benefit of the national radiation program. Our experience has been one of a "two-way street," which we desire to see continued.

The OAS comments contained a list of some routine benefits provided by the Agreement States. There are other examples of assistance provided on an infrequent basis. This includes:

- A. Assistance to other federal agencies.
- B. Assistance to the NRC by performing inspections in the Gulf of Mexico.
- C. Assistance to the NRC by accompanying NRC staff on fact finding trips to certain industrial operations.

Another topic of DSI 4 is that of co-regulators. Since Atomic Energy Act (AEA) sources of radiation are a small contributor to radiation exposure of the public, all of the states are co-regulators with NRC in the "overall national program for radiation protection." One of the larger source of radiation exposure to the public is from machine-produced radiation used for human diagnosis and medical treatment, which is regulated solely by the states. Also, the states independently regulate naturally-occurring and accelerator-produced radioactive materials. The Agreement States are also certainly co-regulators of AEA materials, and the states currently administer the majority of all AEA material licenses.

The Agreement States program is a device of the federal government; yet, the Atomic Energy Act allows the NRC to provide very little in the way of financial support. In the matter of NRC resources expended on the training of Agreement State staff, it may be that the NRC has missed the most important aspect of this question. Training is the primary method that NRC has to insure compatibility, which is NRC's fundamental responsibility under the Atomic Energy Act. NRC training is also the primary method of maintaining uniformity among the Agreement States. Compatibility and uniformity can not be maintained solely by the review of each state's program; it can only be maintained when the staffs of all the radiation control programs receive equivalent training. There is also a great value in the exchange of ideas that takes place between the states and NRC in each class. These ideas are taken back to the programs by the individual students. Furthermore, when the value of training to the NRC becomes obvious, it may be too late to recoup the ground that has been lost in the training courses.

Training will come from some source, and it will be adequate for a given state's needs, but if the states are left to find training wherever it exists, we will lose the uniformity which we've enjoyed in the past. It will also take longer to train new staff than before. There are quite a few organizations around the country which are equipped to offer adequate training, but the cost to the states can vary from minimal to monumental.

Most program directors acknowledge that states are a fertile training ground for industry to seek trained employees by offering increases in salary and benefits. This is a problem shared by

most states, and as a result, states are in a mode of continuous training as new employees are added. If all states had the same resources, the result of NRC's removing its support would not be as variable. States would all be in a position to tackle the problem in similar fashion and maintain a certain level of competence. However, because of the great variability in state resources, it may be that one of the adverse effects of discontinuing training programs at no cost to the states is that some states will seek to entice trained personnel away from states who have such personnel, thereby increasing the load on states losing those personnel.

There is a close link between training, uniformity, and compatibility. Thus, the NRC should continue to take the lead to ensure that adequate training is provided at little or no cost to states. If the decision is made to discontinue or severely curtail the present support for training, the NRC may need to reassess its insistence that every state program have the level of training presently expected within a specified period of time or else be non-compatible.

One of the options mentioned in DSI 4 was to turn the Agreement States Program over to the Environmental Protection Agency (EPA). Although the need for federal oversight of the states' radiation programs may be questionable, it should be by NRC or perhaps the Food and Drug Administration (FDA).

In regard to DSI 7, Option 5, turning over all regulatory authority for AEA materials to the states is recommended. Option 5 is the only reasonable hope that NRC licensees have to contain or reduce their fees. Eliminating 50% of NRC's remaining licensees, for example, would only eliminate 50 staff positions according to this paper. However, there is no estimate of the effect that this would have on fees for the remaining 50% -- perhaps they would double. As the number of licensees declines, fees rise and this accelerates the decline by causing licensees to give up their licenses or even relocate to Agreement States. This should be seen as a natural process driven by Section 274 of the Atomic Energy Act, which created the Agreement States program in the first place. The more states that accept responsibility for AEA materials and add them to their radiological health programs, the more difficult it becomes for NRC to support its program by fees imposed on such a small number of licensees.

Since states now regulate a large majority of AEA materials licensees, it is becoming impossible for NRC to support its program with the current overhead. There may be ways in which NRC could reduce its operating costs, such as eliminating the practice of contracting out work that might be done by its own technical staff and reducing its research and rule making activities to those that are truly necessary to protect health and safety.

DSI 21 discusses the imposition of NRC fees. Implicit in the discussion is the possibility of recovering the cost of oversight of Agreement State activities on 21B. As stated earlier Louisiana

provides as much assistance as it receives; therefore, recovering the cost of oversight is inappropriate. Perhaps NRC should seek relief from full cost recovery through fees.

With regard to DSI 24, the "...new and innovative regulatory approach..." #1, namely, to transfer nuclear power plants to Agreement State control after fuel has been removed from the Part 50 site, is something this Agreement State would not find acceptable because of the additional resources that would be required. This could be viewed as an unfunded mandate. The nuclear power plants have been licensed by the NRC, who should continue oversight rather than transferring the problem to a state.

Thank you for the opportunity to comment on this very important NRC initiative.

Sincerely,



Ronald Wascom
Deputy Assistant Secretary

RLW