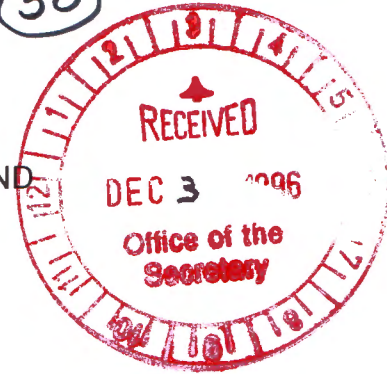


DSI-6

(30)

From: <RDegraff@aol.com>
To: WND1.WNP2(secy)
Date: 12/3/96 3:24am
Subject: COMMENTS ON NRC STRATEGIC ASSESSMENT AND
REBASELINING



December 2, 1996

COMMENTS ON NRC STRATEGIC ASSESSMENT AND REBASELINING INITIATIVE
Submitted by

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I am submitting comments on the following Direction-Setting Issues:

- DSI 4 NRC's Relationship With Agreement States
- DSI 5 Low-Level Waste(LLW)
- DSI 6 High-Level Waste(HLW) (in conjunction with DSI 22)
- DSI 22 Research

GENERAL COMMENTS

The central theme of my comments relates to the concept of regulatory excellence which is the cornerstone for building and maintaining public trust and confidence. This consideration is especially important to the safe disposal of radioactive waste where lack of public trust and confidence is commonly recognized as the single most important root cause of the poor record of accomplishment in this area by the federal government and the

States. In commenting on these issues I am addressing the overriding concern that in managing change in an era of federal resource downsizing, the NRC does not base its assessment and future decisions on erroneous assumptions about the environment of the regulator and the regulated, made through expedience and convenience rather than fact and reality. Such poor assumptions or invalid projections that can not stand the test of time will lead to erosion of regulatory excellence instead of enhancement. Since public trust and confidence are fragile commodities, it is far better to err on the side of conservatism.

In several cases in the above-referenced DSIs some of the options offered were entirely unrealistic, bordering on a "Washington Monument" strategy, or if sincere, giving the agency the appearance of abandoning its traditional leadership role, and/or defaulting on this role to other federal agencies.

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We recognize that agency downsizing is difficult and painful, but the NRC must put its priorities in their proper perspective in terms of operational support staff vs. program and technical staff. Lest we forget - the business of the agency is program and program products used for regulation, oversight and enforcement. Consider the national importance of safe disposal of radioactive waste to preserving the nuclear power option; use of radioactive isotopes in medical research and diagnostic medical procedures, and industrial applications of radioactive material. Next, consider that the current NRC direct staff resources for LLW and HLW programs in NMSS, RES (and ACNW and OGC) represent only about 2% of the total staff resources of the agency, and compare this with the staffing of say the OIG which is at a similar level.

Does this situation make sense? What rationale would the agency use to justify this apparent statement of agency priorities? The message here should be clear - as part of its strategic assessment and rebaselining effort, the NRC must also reexamine, critically and objectively, its non-program support staff (outside of the program offices) resources.

In several instances in the DSIs noted above, de facto decisions have already been made at the stall level (even some with Commission concurrence) to downsize programs such that the options offered may not really be meaningful or are in reality unachievable because of the practical irreversibility of major programmatic and staffing actions.

COMMENTS ON DSI - 4 NRC'S RELATIONSHIP WITH AGREEMENT STATES

The comments on this issue paper are strongly linked to the LLW issue paper (DSI 5). This issue paper focuses heavily on the question of resource support to Agreement States for training, travel and technical assistance.

What this paper (or even the LLW paper fails to address, particularly with respect to the Agreement State LLW Program, is the question - Have the Agreement States been given the necessary documented guidance and tools to achieve regulatory excellence at an adequate and comparable level to the NRC when measured by the traditional standards the NRC has set for itself? Among the most important principles that have always guided the NRC in attaining regulatory program excellence are:

- independence (separation) of the State regulator from the State LLW disposal facility program authority
- early, open and continuing public involvement
- decisions based on good science
- adequate quality assurance including expert, peer review

Explicit guidance to Agreement States for LLW disposal facility licensing and oversight encompassing the above principles is lacking. Neither the Agreement State Program Policy Statement nor the Policy Statement on Adequacy and Compatibility of Agreement State Programs or its recently completed implementation

procedures address the guidance needs in this area. Reviews of lessons learned from the experience of the Agreement States to-date have shown that in every case where site development and licensing has either been terminated or significantly delayed, one or more of the above principles have been overlooked, not followed, or improperly applied.

We recognize that it is not possible or even necessary for the Agreement States to duplicate the regulatory infrastructure of the NRC, but they should at least be able to model their regulatory program after the NRC sufficiently to meet the standards by which the NRC achieves regulatory excellence. No mechanism or procedure is currently in place or being actively pursued by multi-State organizations (OAS, CRCPD, LLW Forum) to develop, promulgate or enforce coherent, uniform guidance of this type.

One clear example where such guidance is needed is a finding of the current practice in four Agreement States in which the regulatory and disposal facility program responsibilities reside in the same State departmental organization. How can the public ever gain confidence and trust in a real or apparent conflict-of-interest arrangement. In fact it is interesting to note that just recently, in Nebraska, the Central Interstate Compact Commission (operating through the state of Nebraska, as first host state, where LLW program responsibilities reside in the Nebraska Dept. of Environmental Quality and Dept. of Health) issued an ultimatum on license application review schedule to the Nebraska LLW licensing organization - coincidentally also in the Nebraska Dept. of Environmental Quality and Dept. of Health!

Another example, in the area of quality assurance, involves the need for independent expert review of site characterization, performance assessment and environmental monitoring by the licensee (at least). In my 1994 paper at the 16th DOE LLW Conference, I recommended peer review of technical activities associated with LLW disposal facility siting, licensing and operation. The National Academy of Sciences/National Research Council Report on the Ward Valley, California LLW disposal site noted the need for an independent peer review panel for ongoing review of scientific and technical quality of investigations associated with a LLW disposal site, as one lesson to be learned from the Ward Valley experience. In its August 15, 1995 report to the NRC Chairman on lessons learned from the Ward Valley siting process, the ACNW recommended that NRC staff provide guidance to the Agreement States on the formation and use of such peer panels. To my knowledge, no such guidance has yet to be provided by the NRC staff.

Based upon discussions of NRC staff during ACNW meetings on the review of SECY 95-201- Alternatives to Terminating the NRC LLW Program, the IMPEP reviews of the Agreement State LLW Programs appear to be superficial and understaffed with respect to ability to judge technical quality of staff and program actions. This view appears to find support in the discussion on VI. Related Issues on page 20 of DSI 4, A. To what extent should NRC's review of Agreement State's

LLW Program address that State's ongoing review of a proposed LLW facility?

It is difficult to see how the IMPEP review of the technical quality of an Agreement States licensing actions and regulatory program can avoid dealing with issues and regulatory performance directly related to the review of a site. If such reviews necessarily call into question the quality of the technical review of a site or operational facility with implications for the technical merits of a site, so be it. For the NRC to separate the issues of quality and merit so as not to be disruptive of the State processes, is on the face of it, ludicrous and not in the best interests of the public health and safety. As discussed later under DSI 5, the NRC's concern with States LLW Program disruption has not served the program or the Nation well.

In considering its options the NRC must recognize and take into account that Agreement States are also experiencing downsizing of program resources.

On the basis of the above discussion, I recommend Option 3 with enhanced guidance, technical assistance and IMPEP reviews. This recommendation is consistent with the recommendations presented in DSI 5 - LLW.

COMMENTS ON DSI 5 - LOW-LEVEL WASTE

The comments presented in the previous section on DSI 4 apply as well here, and serve as background and prologue on the subject of LLW. DSIs 4 and 5 are strongly linked.

Many of the options discussed in this paper are based on overly optimistic assumptions with respect to the state of maturity of the Agreement States regulatory programs and the progress being made under the national LLW program. The projections of needs for future disposal capacity have been underestimated. The NRC continues to fail to learn the lessons of the past regarding the unpredictability of LLW disposal capacity needs and the penalties of short-sighted planning. Given the track record of the national LLW program since 1985 and the possibility of accelerated decommissioning of reactors in the next decade, prudence should be the order of the day. Much of the optimism presented in this paper appears to be a rationalization of a de facto decision process that started in 1992 and has seen NRC LLW staff resources decline by over two-thirds between 1992 and 1996. These resources were declining during a period when the Agreement States should have been receiving guidance and technical assistance to bring their programs to the level-of-maturity that the agency now claims to exist.

Progress towards siting new LLW disposal facilities has been disappointing.

The national LLW program continues its pursuit of achieving consensus, gaining credibility and effecting needed change, while short on resources and needed NRC guidance. The necessary effort to correct this situation must come from NRC leadership and a strong regulatory role. The ACNW recommendations in their

December 29, 1996 report to the Chairman on SECY 95-201 supported a stronger NRC LLW program. A consensus of the national LLW program generally supports this position.

One of the subsumed issues on page 16, DSI 5 involves the promulgation of final guidance on the branch technical position(BTP) on performance assessment. There should be no question about the need to issue the BTP as representative of the state-of-the art and good science based upon research results and improved methodology derived in part from the NRC LLW research program. The NRC must get beyond this continuing concern about new guidance of this type being disruptive to States. The arguments about the BTP being unnecessary are wrong, without foundation, and not consistent with the concept of regulatory excellence. Use of anything less than good science(as is the case with some methods still being employed) will only result in a loss of credibility and an inability to withstand future peer review.

Resource-conserving strategies involving the "shuttling of staff capabilities between decommissioning and HLW programs looks good on paper, but is not viable in practice and should not be considered.

Given the current environment, Options 1 or 2 or some mix of both are the only realistic and viable options available. In the Commission's preliminary view on this issue it noted that Option 2 would encompass all of the activities that were performed before the recent reductions in the LLW program. The definition of "recent" is not clear. Based upon the additional needs noted in performance assessment guidance, enhanced IMPEP review technical support, and other additional guidance, staffing levels of 1994 are called for. Concomitant increases in LLW research staff are also justified based on discussion to follow for DSI 22.

In September 1992 the Commission directed the staff to prepare strategies and options for encouraging the States and Compacts to develop new LLW disposal facilities. The staff responded in April 1993 with a paper that addressed many of the same issues that remain unresolved today. In November 1993 the Commission took no action out of concern that major initiatives at that time might have unintended consequences for major actions being undertaken by States and Compacts. In 1994, 1995 and 1996 program support for LLW continued to decline to its present level. It appears that during these three years the consequences of doing nothing had a far greater negative impact than the intent of the Commission's decision. Is there sufficient time now using Option 2 to effect the needed changes to the national program?

COMMENTS ON DSI 22 - RESEARCH

Without viable research programs and staff in LLW and HLW the NRC will lose an important requirement for maintaining regulatory excellence in the LLW and

HLW. The NRC and States will be dependent on the information provided by the licensee, be it HLW or LLW. This also results in loss of regulatory independence. How does the transfer of the HLW research program in RES to NMSS because of budget reductions solve the resources problem - it is still the same resource level? Transfer of HLW research to NMSS violates the spirit and intent, as well as the letter of 1975 ERA. Research contracts have to be managed by RES staff, even the CNWRA contract must be managed by NRC staff. Staff with licensing responsibilities can not effectively or objectively manage regulatory research programs.

The NRC LLW program should be restored to an appropriate level. The RES staff presentation on LLW research during the public meetings on the strategic assessment was incomplete and misleading, and thus did not prompt needed discussion and input. With the termination of the USGS LLW program a few years ago, and little if any LLW research by the DOE or States, the planned NRC program is still the major source of research results needed to resolve important issues which are needed to confirm certain assumptions and methods used in site PA and its integration with environmental monitoring of LLW disposal facilities during operation and post-closure.