

ENVIRONMENTAL COALITION ON NUCLEAR POWER

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DSI-6

(41)

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November 6, 1996

Mr. John C. Hoyle
Secretary of the Commission
U.S. Nuclear Regulatory Commission
ATTN: Chief of Docketing Service Branch
Washington, D.C. 20555-0001

RE: NRC Strategic Assessment and
Rebaselining Initiative Project



Dear Mr. Hoyle:

Please accept the following sets of comments on the Commission's future Planning Initiative cited above, including overall comments on the Planning Framework, the public "Stakeholders' Meeting," and on the available sixteen of the twenty-four Direction-Setting Issue (DSI) papers. These comments are filed on behalf of the Pennsylvania-based Environmental Coalition on Nuclear Power, a not-for-profit ad hoc citizens organization, founded in 1970 and long active in issues related to nuclear power, weapons, regulation and standards; radioactive waste management; radiation and health; and alternative forms of safe energy. We have participated, as public-interest critics of the nuclear industry and its regulators, in many NRC generic and reactor license proceedings, panels, workshops, conferences, and regulatory decision-making over these years. Our interest lies in maximizing protection of human health and the environment. Providing that protection is the primary statutory obligation of the NRC and its sole justifiable *raison d'être*.

It is our understanding that the Commission undertook this massive rebaselining project in accordance with directives of the 1993 Government Performance and Results Act (GPRA) to streamline and downsize agencies to gain efficiencies as well as budget reductions. But options proposed in the DSI papers also will structure and formalize the NRC's modes of regulation well into the twenty-first century. We regard this as highly significant decision-making.

REQUEST FOR RELEASE OF DOCUMENTS AND EXTENSION OF THE PUBLIC COMMENT PERIOD:

We first request that the Commission: (1) release and notice for public comment the eight DSI papers that have been withheld by NRC (discussed below); and (2) extend the public comment period for an additional ninety days beyond the date of their FR Notice. We are informed that the November 15th comment deadline has been extended to December 2nd. The original deadline was a scant two months from the initial date of publication of the issue papers; it was not enough time. Federal Register notice was delayed, further shortening available time. Public-interest groups learned of the documents' availability only belatedly, and then directly from an NRC staff person who was actively seeking citizen inputs at the eleventh hour before the first of the public meetings.

We were told that the Commission had subcontracted arrangements for these proceedings to a firm that, quite evidently, had failed to provide notice to members of the public -- even to those well known to the NRC staff for their continuing interest and involvement who are on NRC's standard distribution lists and are often invited to participate in such Commission endeavors. The volume of these documents is substantial and the discussions contained in the DSI papers require careful consideration prior to comment. Since the purpose is long-range planning, no irreparable harm to any interested party will result from granting a time extension for comment.

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However, in order to offer meaningful comments, it is essential to be familiar with the content of several of the DSI papers that the Commission has withheld from the public. Issues relating to NRC Management Philosophy, NRC's internal Management and Organization, Information Resources Management Planning, Staffing and Core Capabilities, and Independent Oversight are all of great importance to the overall functioning of this regulatory agency. For the NRC to withhold them from public scrutiny is a grossly arbitrary and capricious action. It is clearly contrary to NRC policy and public interest. These are, after all, matters of health, safety, present and future environmental quality, and appropriate, defensible expenditures of public tax funds. We therefore strongly urge the Commission to release the other eight DSI papers and approve the ninety-day extension we are requesting.

We note, moreover, that there is considerable controversy about use of both the concept and terminology of "Stakeholders" in regulatory proceedings, as has been done here. Federal and state bureaucrats have been applying the term "stakeholder" to delineate some small fraction of all of the persons who are or will be directly and indirectly affected by agency actions. Of course, it is easier for an agency to limit active participation to some small segment of those with various legitimate interests in the outcome of a rulemaking or policy decision. While those "selected" to participate may well be highly knowledgeable individuals, they cannot legitimately speak for those who are not present and who are unrepresented. The next limiting regulatory step becomes adoption of negotiated regulations ("reg negs"), further reducing public input, often with compromises that are not acceptable to those who are most affected by a "stakeholder consensus" from which the mass of the affected population is excluded. The process diminishes and subverts Congressionally mandated goals of public participation. It is anti-democratic. We oppose use of a limiting "stakeholder process" by NRC, and we request that, as had been assured in advance of the three public sessions, the term "stakeholder process" not be used in connection with this policy development.

We note, too, that a huge section of the nation was effectively denied a realistic opportunity to attend any of the three public meetings set up by the NRC's unidentified subcontractor. Washington and Chicago may be hub locations, but there are few NRC licensees in the Rockies, and it's a very long way from the West Coast to Colorado Springs, especially for those whose travel expenses are not subsidized by the government or regulated industry. Several additional regional public meetings at accessible locations should be scheduled and conducted, with ample public notification after release of the eight DSI documents now withheld and prior to closure of the public comment period on rebaselining.

THE COMMISSION'S "FOCUS QUESTIONS":

As we understand it, the Commission is seeking comments in particular on: (1) What has been forgotten in the DSI papers? (2) Are the assumptions and projections for internal and external factors accurate? and (3) Do the Commission's preliminary views on each DSI paper respond to current environment and challenges? Other questions may also be asked and answered, or commented on.

Our initial overall response to the questions posed by NRC is that the Commission appears to be using this GPRA statutory directive to move farther away from its original and primary *raison d'être*: viz., strict regulation of

the nuclear power industry, radioactive waste management, and some DOE weapons-related activities, in order to prevent radiation damages. We do not find sufficient expression in these papers of the regulatory goal of minimization of radiation releases, radiation exposures, radiation injuries, or radioactive contamination of the environment. The Commission must restore those paramount objectives to centrality in each of these DSI position papers and the options chosen.

THE MISSING DECISION-SETTING ISSUES PAPERS:

We object to the Commission's decision to exclude from public comment one-third of the original twenty-four DSI papers prepared by the staff. What may seem merely internal to the NRC is of major importance to members of the public who will be affected by the decisions reached. For, at minimum, the reasons below, we request that the Commission release for, and seek, public comment on the following DSI papers:

DSI No. 1 (*Regulating Areas of Little Public Risk*): NRC's notion of "little risk" may differ greatly from the public's view on this controversial topic. The definition of risk, what is now excluded from consideration, and what risk is acceptable are in dispute. The public must be able to comment on this issue.

DSI No. 3 (*Dual Regulation with other Federal Agencies*): There is substantial controversy with respect to EPA/NRC regulatory duality for, for example, Mixed Waste; and all aspects of NRC/DOE relations and authority; management of GTCC LLRW; state authority and limitations relating to EPA vs. NRC and DOT transportation preemption; nuclear materials/waste deregulation/recycling; "guidance" vs. regulation; and the future role of local governments in relation to all of the above. The public needs to see the NRC's paper on Dual Regulation.

DSI No. 8 (*Regulating a Small Number of Licensees*): Here, too, intersection and conflicts of state and federal authorities may come into question. Moreover, a small number of licensees may have the potential for very large radiation releases and impacts on the well-being of the public and environment. The NRC has a history of inadequate regulatory attention to some categories of licensees in the past, e.g., the large-scale irradiators -- few in number but potentially very dangerous for the public. Let the affected public decide if these licensees should be disregarded; this DSI paper must be released.

DSI No. 15 (*Management Philosophy*): It is absolutely unconscionable that NRC would withhold this issue document above all from public scrutiny. There is a deep, abiding distrust of this agency that we in the public-interest sector continue to encourage the NRC to overcome by providing the trustworthy regulation that we pay you for. The behavior that is most likely to worsen mistrust is NRC's refusal to release information. The sunlight of public comment is unquestionably essential with respect to this agency's management philosophy. All else depends upon it. No meaningful comment can be provided for any other DSI paper with full knowledge of the Commission's management philosophy. This document must be made available for public comment, and the comment period for all DSI papers extended in order to analyze options in light of NRC management philosophy.

DSI No. 16 (*Information Resources Management Planning*): The explanation for withholding this paper only piques our curiosity. What plans had NRC staff devised for "managing" information resources? What implementation has taken place under the Information Technology Management Reform Act? How does NRC's interpretation of these laws affect the public's access to NRC and NRC licensee information and data vital to public health and safety?

One example of a concern that seems to flow from NRC action already taken: as electronic access becomes more common, there is strong agency and industry pressure to rely on that form of communication, as with Interactive Rulenet. Electronic communication tends to reduce both availability of hard copy and the lead time for perusal of documents and submission of comments. Together, these factors adversely affect the right of participation for the portion of the population unable to afford electronic equipment and for those remote from affordable electronic access providers. This inability to obtain information in order to have timely input fosters environmental injustice, and related economic injustice for the poor or remote. This matter of justice for all was addressed in the President's Executive Order on Environmental Justice with which the Commission must comply. What future plans has the NRC for information control? For these and other reasons, this document should be made public.

DSI No. 17 (*Management and Organization*): Regulatory openness requires NRC to encourage the affected public -- and its licensees and sibling agencies -- to comment on what are and are not "internal issues." How the NRC is organized and managed is most certainly important to the public as well as the regulated community. For example, SECY 95-201 dealt with the Commission's intention to eliminate the LLRW regulatory division altogether. Had not members of the public commented on the downright stupidity of such a move, NRC's withdrawal of this plan might or might not have occurred. Indeed, if we can't see a document, how are we to know what the Commission intends to do? DSI No. 17 is central to public knowledge and understanding of how a rebaselined NRC will function; it must be released for public comment.

DSI No. 18 (*Staffing and Core Capabilities*): Here, too, "core capabilities," the quality and "defense in depth" of the staff's experience, its competency, and regulatory load-bearing size, are all matters of obvious public concern. With due regard to the EDO this issue paper must be subjected to public comment as part of NRC's assessment of its own "redundancy of regulatory safeguards."

DSI No. 19 (*Independent Oversight*): What on earth does NRC mean by "issues, options, and strategies to be addressed by the EDO" with regard to independent oversight of this Commission? It is the public -- which has independence from the agency and governmental bureaucracy -- who are, above all others, qualified to decide what kind of "independent" oversight this agency should have, not the agency itself that has sore need of being independently overseen. This paper must be released for public scrutiny and comment.

A full third of the twenty-four issue papers which are the basis for the Commission's ultimate rebaselining and regulatory reorganization decisions are being intentionally, unjustifiably withheld from the public. This is wrong. All 24 DSI documents must be made public and the period of time for comment extended for an additional ninety days after they have been released and announced in a manner that will timely reach members of the public.

STAKEHOLDER INVOLVEMENT PROCESS PAPER, 9/16/1996:

Despite our earlier scolding about electronic access, the cited methods of obtaining documents are comparatively numerous -- especially if one has an electronic access -- but this only accentuates the shortage of public comment time allotted. In the Background section, we note the absence of labor -- the workers -- from the list of "stakeholders." And obviously those yet to mature or be born in decades ahead cannot speak, and have no spokespersons.

In the Statement of Purposes of the Strategic Plan, we would be more comfortable if the NRC listed protection of health, safety, and environment ahead of NRC decision-making, and if NRC stated that it strives for more than merely "adequate" protection of health and safety. Mere "adequacy" is not acceptable. Neither the public nor NRC can expect a licensee voluntarily to go beyond the minimum requirements; hence, given the potential for serious and irreversible damage in the event of major radiation accidents, the Commission's purpose and goal must be to provide excellence of regulatory protection.

In the Overview (at p. 3), the NRC should state unequivocally that it does not anticipate, or therefore need to prepare for, either new reactors or license extensions or renewals for existing aged plants. That is the primary condition for the public to be able to believe that this NRC soul-searching exercise is in fact in the public's interest. As for the industry that NRC is mandated to regulate, quite unlike real "maturation," the nuclear power industry seems to be staggering into old age and gross incompetence. But, with the childish, irrational willfulness of the senile, the electric utilities obstinately refuse to close their dangerous fatigued reactors -- or even to comply with their license requirements. The nuclear utilities are in need of a far firmer hand to regulate their operations, and to direct them by enforceable and fully enforced regulation toward near-term reactor closures, not merely to "guide" them in ongoing operations and toward some vague goal of shutdown.

If the NRC were truly a responsible regulator, the Commission would now be increasing, not relaxing, all regulatory requirements for maintenance, equipment repairs and replacements, decommissioning plans and funding, and site decontamination. It would be suspending licenses, ordering immediate closure of unsafe poorly managed plants, and penalizing licensees to the fullest extent of the law. It is not.

We see little evidence that the NRC fully recognizes the safety implications of the restructuring, mergers, and deregulation of the electric utility industry now underway in many states. This NRC rebaselining, instead, seems designed to plan for doing less with less in the future, realistic only with respect to anticipated reductions of agency funding by Congress. This approach is not good enough to meet the Commission's statutory charge to protect the public health and safety and the environment.

The list of Overall Objectives (p. 4) is somewhat more reasonable but indicates little imaginative intent to alter the institutionalized customs and practices of the agency or to place a premium on improving public and environmental health and safety by upgrading and strengthening regulations or by requiring the maximally achievable decontamination of sites under NRC license.

The Phase I Strategic Assessment describes a complex "bottom up/top down" approach to analysis. Of particular concern are the "voids" expected to be picked up at the Framework stage. What tests or checks are employed to assure that significant void matters are not overlooked? What will be the public involvement? When will it occur in the process?

In the Phase II Rebaselining and Issue Papers description (p. 6), we concur that some of the options seem extraordinary -- an overly polite term. Our concern would be that, by setting up some *outré* options, the Commission then moves the spectrum of acceptable options in a direction which will not ensure that the most rigorous future regulatory program will be carried out. We are reminded of radical political agendas of recent Administrations and Congresses that were designed to move the national discourse extremely far from the nation's center.

Will the NRC seek public comment on the Strategic Plan that results from the amalgamation of Phases I through III? The Framework document Figure 1 does not indicate that it will. NRC must do so, especially since it appears now that the range of comments on the DSI papers from members of the affected public will be relatively minimal, unless a longer comment period and greater effort by the Commission to obtain public input are approved.

COMMENTS ON THE STRATEGIC PLANNING FRAMEWORK:

In the Introduction, the NRC lists elements of their "rapidly changing environment." The single most important change is not included. That is the increasing scientific and medical verification of the adverse health impacts -- including in particular non-fatal, non-cancer effects -- of repetitive, chronic exposures to low-dose radiation via ingestion and inhalation pathways, with resultant interference with the functioning of the human immunological system and consequent disorders. These are of special importance during embryonic and fetal development, in rapidly growing young children, and in the elderly and persons with impaired health. As for genetic effects in the aftermath of the Chernobyl catastrophe, chromosomal abnormalities have been detected, as well, in the offspring of couples residing as far as 150 miles from the reactor site. Reports of children's illnesses and chronic disorders have skyrocketed, and are attributed by attending physicians to chronic low-dose irradiation in addition to the multitude of deprivations experienced following the disintegration of the USSR.

Highest consideration therefore must be given to adverse radiation effects on human health: the multiple, additive, cumulative, and synergistic impacts of exposures to an individual recipient, as well as to whole populations, from many unmeasured sources, interacting synergistically with one another and with other contaminants in the environment. New research approaches, as in the field of molecular radiation biology, are improving our understanding of complex and subtle radiation impacts previously left unexamined. Much remains unknown.

We commend to NRC the recent, somewhat popular, study by Dr. Theo Colborn, *et al.*, entitled Our Stolen Future, 1996. The authors make the pertinent point that public and worker exposure standards have been and still are based on the most gross of the adverse effects, *viz.*, fatal cancers and major genetic defects in the first generations following exposure. Of far greater

significance to the survival and well-being of our species is the capability for successful reproduction and maturation into whole, healthy human beings. The dose level of some pollutants to impede proper gender differentiation, for example, is infinitesimally small, regulated in the trillionths of parts. In the realm of radiation effects, in the past we have not looked, and hence we have not observed subtle injury. That blindness is no longer acceptable.

Moreover, the NRC appears to rely less and less on its own statement some thirty years ago that all radiation exposures carry the risk of genetic damage; and that there is no evidence to refute the linear dose-response hypothesis, a position affirmed by the BEIR V Report in 1990. Furthermore, ICRP and NCRP have long based their standards recommendations on the premise that a recipient must receive a benefit commensurate with the risk for any exposure to ionizing radiation above naturally-occurring background. Risk calculation, if it is to be used at all, must incorporate all negative impacts, not the selective few. The international bodies have lowered levels of permissible exposure in recent years; stricter standards compel stricter regulation and/or closure of facilities that fail to comply fully with all regulations.

This is the changing issue that is (and certainly should be) of primary importance for the Commission. But it isn't even mentioned. With increasing sources of harmful exposures, to paraphrase Lewis Carroll, in our country you have to regulate more stringently just to stay in the same place; you have to regulate twice as strictly if you want to move ahead in health protection. The issue is compounded by accelerations of growth in many forms of environmental contaminants and in populations that are exposed *in utero* and after. If NRC chooses to ignore or diminish the effects of low-level radiation exposures, all the rebaselining in the world will be a sham, and a failure. This is the foremost Mission-Critical Strategic Arena -- more fundamental even than assuring safe operations, use, handling, and waste management.

We find the Mission Statement especially troubling in its claim to aim for only "adequate" protection of health and safety. That's not good enough. Maximizing radiation protection by minimizing dose is the best regulatory stance -- down to the zero tolerance level from manmade radiation sources now demanded by many environmental and grassroots organizations among the "stakeholders." The NRC's safety philosophy now omits "Redundancy of Safeguards" (p.8). This is a crucial mistake. "Defense in Depth" and "Redundancy of Safeguards" have never been quite the same thing; but both are essential components of a responsible, successful regulatory program. The latter must be restored in NRC's safety philosophy and prominently displayed among the Commission's priorities.

Please: a correction: At p. 13, NRC makes the common misleading statement that LLRW generally "contains small amounts or low concentrations of radio-activity." Reactor vessels? Control rods? Other hot internals? Sludge? That statement does a grave disservice to those who are trying to manage LLRW in the safest possible manner, for it reconfirms the public belief that this agency can't be trusted to tell the whole truth. Be honest; define fully.

The Mission, Vision, and Goals section is a bit too saccharine to digest. The general public usually has a remarkable ability to detect insincerity. The language sings of management-process consultants, full, as the Bard put it, of sound and fury, but signifying practically nothing at all.

We note, in the NOTE at the bottom of p. 10, that the Commission states that it welcomes comments on the four strategic arenas that involve internal operations and that "will not be a part of external stakeholder meetings." And at p. 14, the Commission explicitly states that "The NRC has a duty to enable public participation in the regulatory process and to provide public access to information regarding the agency's operation and performance." That is a very clear statement that necessitates the Commission's release for public comment of the eight missing DSI papers. On the basis of these statements, we restate, and reemphasize the importance of, our request for publication of the eight unreleased DSI documents for comment. They are at the core of the "Core Resource Strategic Arenas" listed at p. 10. They are essential to "Building Public Trust and Confidence." The Commission cites them. How can we comment if the Commission refuses to make these documents publicly available?

If the NRC actually adopted and faithfully carried out the Principles of Good Regulation enumerated in Appendix 1, much of the rest of these documents could be eliminated -- but much of the rest of these documents make it all too abundantly clear that the NRC will not do so. This failure is a mistake and a serious failure of the agency to fulfill its statutory responsibilities under the Atomic Energy Act, Energy Reorganization Act, Administrative Procedure Act, and National Environmental Policy Act, and other legislation.

COMMENTS ON STRATEGIC ASSESSMENT DSI PAPERS:

DSI 1: Regulating Areas of Little Public Risk: MISSING

DSI 2: Oversight of the Department of Energy:

It is to be hoped that NRC could prove to be a regulator more effective than a flea on the DOE elephant's hide. Selection favoring Option 4 does not bode well for bringing what is still a rogue agency under a truly effective regulatory control -- and, despite some positive efforts of the present Energy Secretary, DOE remains in desperate need of stringent external regulatory control. That agency can only be awarded a base medal as the nation's single worst environmental polluter, and surely the most expensive to clean up after.

On the one hand, we tend to agree with NRC's position that it will do what it's told to do rather than actively seek greater regulatory authority over DOE activities. We adopt that view not because of the excellence of NRC's regulatory record, but rather because we are not convinced that NRC is willing to exert, or capable of exercising, the rigorous form of regulation which DOE has repeatedly demonstrated that it requires.

On the other hand, the NRC, in our opinion, cannot be relied on to exert the degree of regulatory control necessary to assure the safe operation of the remaining DOE facilities nor the quality of decommissioning and environmental restoration required at the many contaminated DOE sites. NRC's pursuit of deregulation of licensed commercial activities, the decline in required technical specifications, belated discovery of the serious hazard of generally- and specifically-licensed devices as recycled scrap metal, the insufficient reactor inspection and enforcement over many years that have now led to a flurry of righteous warnings to licensees that are out of compliance with their design objectives, the agency's history of retaliations against its own and licensee

whistleblowers, abandonment of a prescriptive regulatory philosophy grounded in redundancy of safeguards as well as defense in depth -- all indicate that the NRC is not competent to perform acceptably. This judgment is further confirmed by the proposals in this Rebaselining Initiative that would additionally weaken NRC regulatory control. Perhaps it's as well that NRC prefers Option 4 and will not seek to gain broader authority over DOE. But somebody had better do so.

DSI 3: Dual Regulation with Other Agencies: see comments below, DSI 7 and 12.

DSI 4: NRC's Relationship with Agreement States:

ECNP has recently submitted extensive comments on the Report of the Joint NRC-Agreement State Working Group for Development of Implementing Procedures for the Final Policy Statement on Adequacy and Compatibility of Agreement State Programs, dated August 21, 1996, and we incorporate those here by reference. Four of the five options offered indicate the Commission's eagerness to divest itself of regulatory authority to the states. Although we have long argued that states must be allowed to set standards and regulations more, but never less, restrictive than federal ones, and that the states should have more authority to regulate and close down commercial nuclear power reactors for which the states must provide emergency response in the event of accidents and take responsibility for LLRW "disposal," it is increasingly clear that many states are not technically prepared to assume such responsibilities nor are they financially capable. Their severe funding crunch is only beginning.

At the international level, nonproliferation proponents claim that the U.S. government must act to prevent the spread of nuclear materials and wastes into unsavory hands; yet in the domestic realm, the NRC has indicated its desire to terminate its own regulatory program for LLRW, relying on the competence of Agreement States. We are observing the marked decline in both staff competence and political will to maintain acceptable regulation within our state, plus the budgetary constraints that together militate against NRC abdication of its regulatory authority. Funding and technical assistance will be required to assure public health and safety protection adequate to the need. Grants should be used to bolster state level nuclear safety programs, not to seduce states to become Agreement States. The impacts of added financial burdens in coming years upon both states and municipalities have not been properly taken into account.

If NRC permits further deregulation of radioactive materials and wastes and encourages recycling, as we expect it to try to do, diffusion of control among the states, in concert with the dictates of the Interstate Commerce Clause, can be expected to lead to more instances of severe contamination of members of the public, as described in Appendix I of SECY-96-221, as well as to multiple sources of additive exposures to individuals absent any monitoring or total dose calculation, with consequent health damage.

DSI 5: "Low-Level" Waste:

As distasteful as we found it, ECNP was supportive of continuation of the NRC's LLRW regulatory program when the Commissioners proposed to abolish it altogether. The states need a national program to provide coordination if there are to be interstate LLRW compacts and to aid the states with respect to

research, waste characterization, and isolation methodologies. NRC's recent report on microbial degradation of concrete suggests that much more research on waste forms and isolation facility design may be required in coming years. But states also must retain the flexibility to provide state-level programs that may need to be more restrictive than those of NRC in order to protect the health and safety of a state's residents. For example, a state with numerous nuclear facilities plus industries that produce hazardous chemicals may need more stringent radiation (and chemical) standards to reduce synergistic impacts on health than are "allowed" by NRC.

The next to last thing this nation needs is to have NRC adopt Option 1 to ram through final approvals of the Ward Valley or Sierra Blanca LLRW sites. Nor do we want NRC lobbying for privatization of LLRW "disposal" or use of DOE sites for commercial "low-level" wastes. That is an improper role for a regulatory agency.

Option 4 appears weak. Option 5 would have the distinct advantage of opening up sorely needed opportunities for citizen law suits if the agency fails its mandate, but EPA's record of handling hazardous wastes and materials by incineration, delisting, etc., and the failures of Superfund do not bode well for this option. The "assured storage" terminology described in Option 6 fits the existing legislated requirements of some LLRW Host States. However, NRC offers this option as a deceptive means of obtaining permanent "disposal" by falsely presenting it as interim storage. That is unacceptable.

The 1974 Energy Reorganization Act separated NRC from promotion of nuclear power. A regulator must not be or be thought to be a promoter; yet NRC is here proposing to be exactly that in its second question and the answers. It then takes the opposite position of proposing to pick up its marbles and go away.

Our observation of the states' questionable capabilities to assure LLRW isolation leads us to recommend that NRC maintain a strong supportive LLRW back-up and research program without becoming an advocate or forcing on communities unwelcome or inadequate LLRW facilities. We have mixed views on the advisability of the LLRW compact system, but it is at present the law. NRC errs in claiming that "almost all stakeholders" favor the LLRWPA framework. Many in the public realm do not, but they haven't been invited to hold a stake. We oppose any hint of federal imposition of national LLRW sites in the industry's cost-cutting move toward minimizing the number of disposal facilities.

Nor should NRC foster privatization of LLRW disposal. We've heard the boast of one private company's CEO that he need not answer to a Board of Directors; he doesn't have one; he owns the company and he makes the decisions. The last thing this nation needs is the cowboy capitalist mentality reaping profits in the nuclear waste business by cutting health and safety corners.

Associated with LLRW management are issues of the impacts of deregulation and recycle, importation of LLRW from abroad, consequences for LLRW management of plutonium recycle MOX fuel or "spent" fuel reprocessing, and destruction of the supposed barrier between military and commercial LLRW. The best way that NRC could assure successful LLRW isolation would be immediately to take all possible measures to curtail and halt the generation of additional quantities of "low-level" waste. We strongly urge adoption of this approach.

As for the Commission's preference, we concur that staff actions should be held in abeyance. Option 2 tends to force NRC action; a mix of this option and Option 3 might better serve the public interest. An integrated approach to the entire nuclear fuel cycle has merit. Even more meritorious is an integrated approach to dose calculation from all sources of exposure, including assessment of all synergistic impacts and consideration of all health consequences in addition to fatal cancer and gross genetic defects. We find a weak link in the movement of LLRW from site of generation through handlers, brokers, shippers, treatments that may include releases via incineration or reclassifications that affect subsequent disposition. Better waste forms are unquestionably needed.

Reclassification of "low-level" waste is imperative. What matter to health and safety are the toxicity and longevity, not the source. In addition to GTCC, much of what currently falls into Classes B and C categories and all long-lived isotopes should be handled instead as HLW. Alternatively, the methods and duration of LLRW isolation should be upgraded to those of HLW; but permissible LLRW dose limits should not be relaxed below the current 25 mrem/yr limit and instead should be made more restrictive. At an absolute minimum, any facility should be required to abide by a zero release design goal.

The importance of unauthorized disposal is clarified in SECY-96-221; the potential for high doses as well as many small ones is evident and alarming. We highly recommend that NRC, in concert with EPA, forbid LLRW recycling offsite of generation into any consumer products and develop a regulatory program to re-capture and reclaim radioactive materials and wastes, NORM and NARM that have been released and recycled. They pose a significant public danger. This issue alone speaks for a continuing LLRW regulatory endeavor.

DSI 6: High-Level Waste and "Spent" Fuel:

This nation's HLW program is an abysmal failure. The sooner DOE admits that Yucca Mountain cannot serve as a permanent deep geological repository the better. There are numerous reactor sites where "spent" nuclear fuel must not be permitted to remain, as on islands or coastlines prone to severe flooding or protected by fallible dikes, or the ones located on or near major active fault-lines. Those who generate "spent" fuel must be required to continue to be responsible for all costs of its storage and isolation. This statement does not mean that our organization advocates onsite storage.

Neither do we advocate transcontinental transport of intensely irradiated fuel rods to any [non-existent] centralized storage facility at Yucca Mountain or on the Nevada Test Site. We cannot be advocates for any of the proposed methods of radioactive waste "disposal." We strongly urge NRC to dispose of the term "disposal" (surely the Commission understands that we can't "dispose" of anything, in accord with some basic notions of basic physics) and instead to adopt a waste management approach based on the concepts of waste isolation and guardianship. It will probably be necessary to address this difficult and delicate issue on a case-by-case basis for a long time to come.

The nation's entire program for the management of all forms of radioactive waste is in dire need of a completely independent review (non-NRC, non-DOE, non-nuclear industry) with recommendations for revision to meet the goal of preventing short- and long-term radiation damage to living things. However, it is not

the proper role of the regulatory agency to be an advocate or proponent in this matter. We must conclude that, since NRC, DOE, EPA and NAS have all failed to produce an acceptable HLW site, technology, facility, duration of control, or appropriately protective public exposure standards, it may be time for the nation to seek more competent entities that may be able to improve upon these sorry performances. Congress should be added to the failure list for getting the agencies into this radioactive quagmire. We are not advocates of turning over the issue to a private for-profit corporation or quasi-governmental body.

We do suggest that NRC and brother agencies begin to study the meaning and implications of trans-solutional problems of which radioactive waste "disposal" is one. If we do ultimately have to conclude that the problem defies technological solution, we shall have to alter virtually all of our technological expectations and refocus our efforts on other means to assurance of isolation. The money spent thus far on contributions to negative results hasn't been completely wasted. A major fault lies in early overly optimistic assumptions that "disposal" was possible and readily achieved. NRC should have known otherwise.

One lesson that should have been well learned by now is that nuclear waste management agencies and programs have wretchedly failed to incorporate public input and involvement. It is the obligation of the responsible agencies to proceed very cautiously and slowly, in concert with all affected parties, to analyses of the most effective methods of preventing radiation exposures to people, and to other inhabitants of the biosystem, no matter how foreign to the agencies' philosophy and practices this may be.

DSI 7: Materials/Medical Oversight:


In preliminarily favoring Options 2 and 3, the Commission seems to contradict itself: continue the present program but decrease it. The NRC's release to the public on November 13th, two days before the original deadline for public comment on these Rebaselining DSI papers, of SECY-96-221 on general- and specific-license devices that escape from regulatory control gives more than ample reason for the NRC to increase markedly, not decrease, its oversight and strict regulation of what otherwise are likely to be deemed "low-risk" objects. These would then be subject to exemption from regulation.

Appendix H of SECY-96-221 details very large exposures to innocent members of the public from a cobalt-60 source, stolen from a bankrupt company. Attachment 3 further confirms the need for control. "External/ingestion dose [levels] <5 rem" are not small risks for recipients. Because nuclear medicine affects not only the patient (one hopes positively) and medical staff but also the families of patients and others, and is considered to be the largest source of radiation exposures for a substantial portion of the public, regulatory control over medical uses of radioactive materials should be increased, not reduced. It is particularly important to do so in consequence of the increasing controls over medical practice by outside entities, such as insurance companies that are concerned primarily with profit rather than health and safety. We strongly urge increased regulatory control, despite the protestations of some in the affected medical community.

DSI 8: Regulating a Small Number of Licensees: MISSING

The remainder of comments of the Environmental Coalition on Nuclear Power on available DSI papers 9 through 24 will follow as supplement to these comments. We urge the Commission to adopt our recommendations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Judith H. Johnsrud".

Judith H. Johnsrud, Ph.D.

Director

Environmental Coalition on Nuclear Power.