



NUCLEAR ENERGY INSTITUTE

DSI-6

23

Dr. Thomas D. Ryan
SENIOR VICE PRESIDENT,
REGULATORY POLICY & REFORM

November 27, 1996

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



ATTENTION: Chief, Docketing and Service Branch

SUBJECT: NRC Strategic Assessment and Rebaselining
(61 *Federal Register* 195; October 7, 1996)
Request for Comments

Dear Mr. Hoyle:

The Nuclear Energy Institute (NEI),¹ on behalf of the nuclear energy industry, has reviewed the Direction Setting Issue (DSI) papers which form a part of the NRC Strategic Assessment and Rebaselining Initiative. The purpose of these papers is to discuss key issues affecting the future strategic direction of NRC and provide options for selection by the Commission. The NRC has requested comments from all "stakeholders" to be considered as part of the Commission's decision making process. Our comments on each DSI paper are organized in the following format:

1. What, if any important considerations have been omitted?
2. How accurate are the NRC's assumptions and projections for internal and external factors?

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

Acknowledged by card 12/23/96 DMS

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3. Do the Commission's preliminary views respond to the current environment and challenge?

4. NEI Recommendations

The NRC is to be commended for undertaking this effort. It is important to periodically review the overall direction of the agency, particularly given the dynamic circumstances in the nuclear industry today. The DSIs identified through the early phases of this assessment are reasonably complete, highlighting the areas in which strategic decisions are needed. Many of our comments highlight areas where the staff analysis of the issues does not include viewpoints significantly different from the status quo.

We are concerned that insufficient review time will reduce the effectiveness of the stakeholder comment process. The stakeholders had a very limited time to solicit and compile comments from their constituencies. We recognize that the public comment period was extended, but the two week extension was announced too late in the process to affect the collection of comments from NEI's members. It is likely that other "stakeholders" representing large constituencies, including licensees with multiple internal organizational groups, were similarly constrained.

Of greater significance is the amount of time the NRC has indicated will be used to assess the comments. NRC staff indicated during the workshops that "Stakeholder Interaction Reports," compiling the comments, would be forwarded to the Commission for consideration within three weeks after the comment deadline. This schedule would make it very difficult for NRC management to consider the variety and volume of public comments that are likely to be received. It could restrict the ability to revise the thinking that went into the initial papers, to define and flesh out new options which may be suggested by the comments, or to provide analysis of such new options for the Commission's consideration. We encourage NRC to take the time necessary to derive full benefit from this important endeavor.

A significant omission from this strategic assessment is the current enforcement policy. That policy has a pervasive effect on the relationship between the NRC and its licensees and on the message the public perceives regarding the safety significance of problems. Other federal agencies with safety mandates, and many foreign nuclear regulatory authorities, have different approaches to enforcement. Some of these are structured differently specifically to encourage compliance, rather than punish non-compliance. NEI strongly encourages the NRC to subject the enforcement policy to the same type of review, examining options different from the

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agency's historical practice, as has been applied to other programs in many of the DSIs.

In many of the DSI papers, past actions of the agency are summarized, but often not critically evaluated. Instead, it appears to be accepted that past regulatory actions were necessary and remain appropriate as continuing regulatory requirements. In fact, many of these actions were in response to specific events and issues, may not have been the most effective means of dealing with the issue, and are inappropriate as continuing burdensome requirements since the causes of the events have been dealt with. A more thorough assessment of previous NRC actions could produce lessons on how the agency could have been, and could be, more effective in addressing issues. Today, the regulatory problems at the Millstone station are the issue of the moment. References to these problems permeate the DSI papers. The papers could well have had a different tone had they been prepared a year earlier. While it is necessary to deal with compliance problems when they are found, it seems inappropriate for individual situations such as Millstone to color so completely the strategic picture for a regulatory agency.

There is agreement between the NRC and industry that safety performance has improved over the last several years. Performance indicators monitored by NRC and industry both demonstrate such improvement. Nevertheless, the total burden imposed by regulatory requirements continues to increase. There is danger that this increasing burden will make it economically infeasible for some nuclear power plants to continue operation, thus depriving the nation of a reliable, clean source of electric power. Such an outcome is not in the public interest if safety is not in question. An improved focus is needed in the nuclear regulatory process on safety significance. We note that Chairman Jackson has often expressed her support for the concept of risk-informed, performance-based regulation. We agree that this is an excellent mechanism for providing the needed focus. It would allow issues to be addressed in their appropriate context, considering both their individual significance and the overall level of safety performance in the industry. It would lead to more efficient means to address those issues that require action. It would appropriately allow for individual variation in the response to an issue, as it is seldom the case that a single specific action is the appropriate, effective response for all members of a class of NRC licensees. The regulatory process needs to recognize this, and allow problems to be addressed in the manner which will be most effective given the circumstances of individual licensees. We encourage the NRC to utilize fully this strategic planning process to further the transition to this more effective and efficient regulatory regime.

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Several of the DSIs would benefit from a practical definition of an adequate level of protection of public health and safety. It is difficult to discuss how to (1) improve public communication, (2) improve the efficiency and effectiveness of the regulator, and (3) properly focus a regulatory oversight program without defining the baseline against which effectiveness can be measured. Without a more objective definition of adequate safety levels, one cannot determine when programs are successful or address a perception that more needs to be done. The NRC needs to develop means for applying the safety goals in a practical manner in order to provide a benchmark that is useful for determining when and how much additional action is required to assure safety.

Significant management attention will be required to implement any changes that result from this strategic planning process. The experience with risk-informed performance-based regulation is instructive in that regard. The Commissioners and senior staff management repeatedly have made comments supportive of such approaches to regulation. There appears to be an understanding, at the policy level, that it is appropriate to deal with issues in their particular safety context. This policy has not been effectively transferred to the working level of the staff. Inspectors and reviewers, whose actions impact NRC licensees on a daily basis, remain focused on detailed, prescriptive approaches. They continue to be concerned with how the "requirements" of NRC guidance documents are met, regardless of the safety objective and inherent flexibility of guidance. It will be very important for the Commission and staff management to devote considerable effort to translating any policy changes resulting from this rebaselining to changes in practice at the working level, so that they may indeed improve the effectiveness of the regulatory process.

We appreciate the opportunity to comment on these issues. We are willing to meet with the Commission or staff to discuss our comments or the related broader issues. Please contact me at (202) 739-8013 if there are any questions regarding our comments.

Sincerely,



Thomas D. Ryan

TDR/RWH/ec
Enclosure

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c: Hon. Shirley Ann Jackson, Chairman
Hon. Kenneth C. Rogers, Commissioner
Hon. Greta J. Dicus, Commissioner
Hon. Nils J. Diaz, Commissioner
Hon. Edward McGaffigan, Jr., Commissioner
Mr. James M. Taylor, EDO

Nuclear Energy Institute Comments

on

Direction Setting Issue Papers

from

NRC Strategic Assessment and Rebaselining Initiative

November 27, 1996

DSI 6 – HIGH-LEVEL WASTE AND SPENT FUEL

1. What, if any important considerations have been omitted?

- In general, the high-level waste issue paper is a bold assessment of the civilian high-level waste/spent nuclear fuel (HLW/SNF) management situation. For example, the paper discusses potentially controversial matters, such as expanding NRC's role to include advising Congress on the national high-level waste management program, streamlining the repository licensing process, etc.

Rather than focusing on possible broad policy changes to the federal civilian HLW/SNF program, NRC should spend its resources developing and implementing ways it can assist meeting the goals of the national program without compromising its independent regulatory position.

- The paper does not address the outcome of industry and state litigation seeking to enforce the federal 1998 obligation, which would require NRC to state its views on the matter in light of the Waste Confidence Rule. Given that there are possible actions to withhold Nuclear Waste Fund payments after January 31, 1998, this is an issue that must be faced in the near future and should have been addressed in this paper.
- The paper does not fully address the growing magnitude of the problem of on-site storage capacity and the impending regulatory burden the NRC will face as utilities and vendors attempt to license new on-site storage capacity, especially if DOE does not meet its 1998 obligation.
- The paper does not examine whether NRC's own approach to regulations, licensing, and interactions with the public could have contributed to the public mistrust the paper mentions. In the issue paper, NRC recognizes that hazardous waste disposal has experienced considerably more success than high-level radioactive waste disposal and goes on to say that "[t]he difference between the progress made with the disposal of HLW radioactive waste versus chemically hazardous materials is not consistent with the hazard associated with each of these substances." A comparison of the EPA approach to chemically hazardous wastes with NRC's program could illuminate reasons for the relatively more successful outcome.
- The paper does not address transportation, other than to mount a spirited defense of the casks used for shipment in the US, which NRC must certify. Since Congress has canceled the DOE multi-purpose canister (MPC) program, NRC is likely to receive an increasing number of applications for dual-purpose storage and transport systems that will be acceptable for at-reactor storage, transportation to an interim storage facility, and storage at a future centralized interim storage site. Accordingly, NRC should continue its

activities associated with 10 CFR Part 72 and provide expedited reviews and approvals for general and site-specific dual purpose storage and transportation license applications.

2. How accurate are the NRC's assumptions and projections for internal and external factors?

The issue paper adequately addresses the uncertainties surrounding the DOE civilian HLW/SNF program, including congressional spending levels, attempts to restructure the program, public mistrust, etc. However, the paper does not discuss assumptions and projections for the outcome of the current litigation; and the burden on NRC for licensing new on-site storage capacity and associated technology, especially should DOE not meet its 1998 obligation.

3. Do the Commission's preliminary views associated with the issue paper respond to the current environment and challenge?

No. The Commission's wait-and-see approach to this problem is wholly inadequate. The NRC staff's paper presents a compelling case for innovative changes to the federal civilian HLW/SNF program to begin to overcome its many obstacles. The NRC should work closely with DOE and promote changes to enhance the program. This is a public health and safety issue.

4. NEI Recommendation

- Elements of Options 1, 2, 3, and 5 are recommended. Option 4 is unacceptable.
- NRC should not attempt to advocate to Congress a particular broad policy and program structure. NRC could jeopardize its critical position as a strong, independent regulator, which is needed to permit the federal program to function properly.
- NRC should take a much stronger role in advising Congress and the general public about the safety of spent nuclear fuel transport, storage, and disposal as practiced in the U.S. Advising Congress that HLW/SNF transportation is safe or that centralized storage of HLW/SNF has benefits over disbursed storage are good examples. NRC should also advise Congress that NRC's efforts to license these activities will assure that any option selected by Congress will be carried out safely.
- NRC should recommend changes to legislatively-imposed processes that would enhance the nation's ability to manage HLW/SNF. A good example would be the environmental review of the repository. Congress has determined that one will be built at Yucca Mountain if the site is acceptable. Therefore, reductions in the scope of environmental review should be appropriate. NRC should

identify changes which would improve its ability to complete evaluation of the repository in the shortest possible time.

- NRC can establish an issue resolution process for the repository which will bind both DOE and NRC to the decisions by docketing the application immediately and getting all decisions on the record.
- NRC should modify its regulations based on experience and impose a risk-informed discipline on the process. Such a discipline should lead to the use of a biosphere model for assessing total repository performance against an established standard and the elimination of subsystem performance requirements. NRC should also update its generic environmental impact statement (NUREG - 0170).
- NRC should advise EPA on an appropriate, implementable repository performance standard.
- The NRC should conduct a thorough review of statutory requirements, current regulations, and various lessons learned to determine how and where the NRC can streamline the licensing and regulatory process for the repository, a federal MRS, private Independent Spent Fuel Storage Installations (ISFSIs), and expansion of spent fuel pool storage capacity. Because of the magnitude of the impending licensing and regulatory workload that the NRC will soon face on this issue, it is imperative that the NRC develop streamlined procedures and regulations that both fulfill statutory requirements and protect the public health and safety, while eliminating unnecessary and duplicative requirements.
- It would also be beneficial to extend the license term for a federal MRS and a private ISFSI to 100 years, since the NRC has concluded previously that spent fuel can be stored safely for such a term. By extending the license term, costs related to unnecessary license extension applications could be avoided altogether. This would also allow amortization of capital costs over a longer period and thereby reduce the impact of depreciation costs in each year.
- NEI is opposed to deputizing DOE or DOE contractor personnel to act for NRC.