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October 23, 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:

Enclosed please find the New York State Department of Labor's comments on three of the Direction Setting Issues Papers (DSI's) included in the NRC's strategic assessment and rebaselining initiative (DSI 4, DSI 7, and DSI 21).

Sincerely,

Rita Aldrich
Principal Radiophysicist

RA:jmp
enclosure

U.S. NUCLEAR REGULATORY COMMISSION
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NYSOL COMMENTS ON
DIRECTION SETTING ISSUE PAPER #4
(DSI 4)

"NRC'S RELATIONSHIP WITH AGREEMENT STATES"

The Summary section of the paper indicates that SECY 95-154, which we have not seen (it is not releasable according to NRC) recommended that NRC develop a policy and program to "further devolve all materials licensing and low-level waste functions to the states through expansion of the Agreement States program" (from Technical Issues Paper No. 35). Since the Commissioners "deferred decisions" regarding this recommendation, so that it could be evaluated as part of the rebaselining initiative, SECY 95-154 should have been included verbatim or at least have been summarized in this paper.

Also missing from the paper is any discussion of the National Academy of Science's Institute of Medicine report on the NRC medical regulatory program. That report recommended that NRC discontinue its regulation of the medical use of radioactive material, and turn its program over to the states. This was also to have been evaluated as a part of the rebaselining initiative, but it is not mentioned in this relevant DSI.

Also, in order to give necessary perspective to this discussion, especially for interested parties who are being solicited for comment and would not otherwise be aware of this, NRC staff should have clearly described the radiation sources regulated solely by the states and indicated what proportion of a state's program is made up of AEA materials. In order to evaluate the merits and appropriateness of NRC's five options regarding the future of its program vis-a-vis the states, it is essential for readers to be aware that the regulation of AEA materials makes up only 25% or less of Agreement State radiological health programs. The reader should also be informed that almost all manmade radiation exposure to the public is from machine-produced radiation, used for human diagnosis and medical treatment, the use of which is regulated solely by the states. Also, the states independently regulate naturally-occurring and accelerator-produced radioactive materials. Finally, the states also regulate the use of sources of non-ionizing radiation which present health and safety hazards, such as lasers, without any assistance from NRC.

Unfortunately, the overall tone of this paper is to present the states as being dependent on NRC, consuming NRC resources and continually needing NRC's oversight and assistance. The "Background" section of the paper lists six ways in which NRC supports the Agreement States Program:

1. approve new Agreement States;
2. assess the adequacy and compatibility of the states;
3. exchange regulatory and safety information with the states;
4. provide "technical assistance" to the states;
5. train state personnel (no longer true); and
6. pay for "state travel related to programmatic activities."

There is no mention of the ways in which the states support NRC's program, however, even though it is a lengthy list. For example, the Agreement States provide staff to participate in NRC's assessment teams and review boards to perform adequacy and compatibility determinations; they also exchange regulatory and safety information with NRC; they also provide "technical assistance" to NRC by participating in working groups, sharing individual expertise and sharing reports and "lessons learned" from radiation-related incidents they have remediated; and finally, they share state-developed regulatory guidance and regulations with NRC. In addition to this, the states expend significant resources in preparing for, and participating in drills of nuclear power plant emergency plans (NRC licensees); responding to transportation incidents involving radioactive materials in interstate commerce; and other transboundary activities, such as tracing and surveying radioactively-contaminated imported products and raw materials.

In failing to provide this information, NRC inadvertently presents a very distorted picture of how radiation use is currently regulated in this country, and of the relative contributions of the states and NRC to this overall regulatory effort. Far from being a situation in which the states depend upon NRC and yet are somehow not paying their fair share, the states fully fund and support their own comprehensive radiological health programs, of which AEA materials are only a small part, including the costs of rulemaking.

This paper also suggests in several places that NRC still provides or subsidizes the training of state personnel, and supports national meetings between NRC and Agreement State staff. It should have been clearly stated that this support, which is the only tangible support the Agreement States have ever been given, has been discontinued without awaiting the results of this strategic assessment (contrary to the statement on page 17).

Given this presentation, the Commission's Preliminary Views on the proposed options (page 24) are understandable, and indeed predictable: maintain status quo. Also, since three of the five options would immediately or eventually lead to the end of NRC's non-reactor materials program, and a fourth (recognize the states as co-regulators) should also lead in that direction, choosing any of those four would admittedly be a difficult decision for NRC staff and the Commission.

However, the facts are that the states are co-regulators with NRC of AEA materials (and are independent regulators of the use of all other radiation sources), and that they currently administer about 70% of all AEA materials licenses and will soon administer about 80%. Having transferred (not delegated) authority to the states for the regulation of all but 20-30% of facilities using AEA materials in the United States, logic dictates that this process be carried to its logical conclusion as recommended in SECY 95-154 by the NRC National Performance Review Steering Committee. It is time for NRC to reduce its program accordingly, and take actions designed for an orderly transfer of all authority to the Agreement States through selection of Option 5 (which could be preceded by Option 2

during a transition period).

The current situation is untenable and unfair for many reasons, not the least of which is financial. At this point NRC is conducting what amounts to a shadow program by expending enormous resources in "overseeing" the Agreement States, while the states actually regulate 70% of facilities licensed for use of AEA materials. This is in spite of the fact that this regulatory authority was transferred to the states.

Since NRC estimates in DSI 7 that eliminating 50% of its remaining licensee base would only cut about 50 staff positions out of a total of 3,000, we would assume that 100-200 staff positions currently conduct all licensing, inspection and other materials activities for NRC's licensees. This suggests that over 90% of NRC staff do not engage in such activities, but are supported by them. Rather than suggest that the states contribute to the support of such a staggering overhead, in addition to fully funding their own programs, or to continue to have NRC licensees bear the burden, it is time to phase out NRC's materials program because it is now redundant.

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