

DSI-11 (25)

ENVIRONMENTAL COALITION ON NUCLEAR POWER

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December 1, 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
Supplemental comments

Dear Mr. Hoyle:

The following pages supplement and complete the comments of the Environmental Coalition on Nuclear Power on the NRC Strategic Assessment and Rebaselining Initiative Project and on the 16 of 24 DSI papers that were made available to the public. Please include these comments with our earlier ones dated November 6th. Thank you.

Sincerely,

Judith H. Johnsrud
Judith H. Johnsrud
Director

I, Judith Johnsrud, affirm that the enclosed material was deposited in the United States Postal Service on December 2, 1996, first class postage paid.

Judith H. Johnsrud



Acknowledged by card 12/31/96 dm.

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DSI 9: Decommissioning - Non-Reactor Facilities:

Despite the lack of waste "disposal" capacity, long time-frames for NRC decommissioning review, large amounts of thorium-contaminated wastes, ground-water contamination, and litigation, cited by GAO in 1995, and the temptation to acquiesce to the desire of licensees for a quick and dirty termination of their clean-up responsibilities, the NRC must impose the most stringent of regulatory requirements on all decontamination activities by all of those whose actions had caused the contamination of sites subject to decommissioning.

Proper clean-up of SDMP sites must be taken to mean complete decontamination, in spite of high costs. The long-term costs to human health and safety of future generations have not been taken into account but must be. Deed or zoning restrictions must not be permitted to substitute for decontamination; their continuation over long periods of time is too uncertain. EPA's proposed groundwater dose limit of 4 mrem/yr must be maintained; an overall 15 mrem/yr dose to the average member of the critical group, or even to an individual, cannot be substituted. Onsite stabilization is a very slippery slope; we oppose NRC's intentions to allow this alternative to clean-up; it is all too easy for licensees or DOE to plead the high costs of decontamination as an excuse for walking away from their obligation.

The involvement of the public at SDMP facilities is a significant agency obligation; however, neither NRC nor DOE should in any way allow the existence of a local advisory group that has indicated a willingness to allow less than complete clean-up to justify the regulatory agency's responsibility to require completion of the task by a licensee or DOE prior to release of the site for either restricted or unrestricted uses. Any added NRC staff costs should be paid by the licensee or DOE. As for the legal constraint of justifying enforcement, the NRC need only rely on the now-evident adverse health and genetic impacts of exposures to low dose and chronic low-dose radiation exposures to meet the ostensibly required demonstration of "significant impact on public health and safety."

With respect to the staff's discussions, we concur that timeliness is a major issue; the farther removed in time from the cessation of operations, the less likely it is that full decontamination will be achieved, the greater the likelihood that responsible parties will vanish. But this factor must not be used to excuse incomplete clean-up. We suggest that the subsumed issues not begin with the question of how quickly sites can be removed from the SDMP list. The use of agency balancing of resources as justification for not doing a proper regulatory job is inexcusable.

All who possess licensable materials should, even belatedly, be brought under regulatory control to the extent possible; this matter is tied with the problems now being experienced with previously deregulated materials that find their way into scrap yards and consumer products, resulting, as is now seen, in unacceptably high doses to members of the public. Licensees should not be permitted the use of alternatives or flexibility that lessens the completeness of the clean-up. Here again, there is a great temptation for the NRC to manipulate its regulatory authority to benefit a licensee that has caused a dangerous situation, leaving the costs of remediation to the taxpaying public that had no voice in permitting the activity in the first place.

With regard to allocation of scarce resources within the agency, we believe that the primary obligation of NRC is to prevent radiation damage -- all radiation damage -- to the public and to the environment in consequence of the activities that NRC regulates. The first step in carrying out this responsibility is to halt the activities that create the problem, thereby preventing the production of more radioactive wastes. The second is to oversee the clean-up of those portions of the nation's land that it has allowed to be contaminated. The third is to assure that all of the wastes that have been generated are managed in ways -- some yet to be devised -- that will maintain control over them for the full hazardous life of the wastes, and in a manner that will permit future populations to have an opportunity equal to ours to be able to continue to maintain that control.

We strongly oppose Options 2, 3, 4, 5, 6, and 7; they are all unacceptable abdications of regulation. A 500 mrem/yr dose is higher by five-fold than the NRC claims now to allow under Part 20. It is totally unacceptable as a dose to future people. NRC cannot justify a failure of regulation as in Option 4 just because EPA is failing to clean up Superfund sites. NORM and NARM wastes are indeed hazardous; reducing regulatory control to their level moves in the wrong direction. The zero tolerance level above naturally-occurring background doses must remain the decommissioning goal. Handing over the problem to another agency that does no better and may do a worse job is no solution. While a more aggressive approach by NRC sounds fine, it is not acceptable if merely designed to let a licensee use less costly -- and less effective -- alternatives. We do not want NRC to allow the kind of cheapest form and least protective means of "disposal," such as Envirocare's surface dumping in the State of Utah. But the aggression that results in requiring timely clean-up without a loss of control over waste or relaxation of dose standards is a positive approach.

We do favor the adoption of a strong litigation strategy, as suggested in Option 8. Nothing stands in the way of aggressive NRC enforcement, and the agency shouldn't have to "consider" such an option; it should have it already in practice for all licensees, especially since no added legislative authority is required. As for Option 9, Seeking Superfund Authority, the use of joint and several liability and triple damages should function as significant incentives to licensees to get on with the task. Especially for cases in which NRC now sees a possibility of near-term bankruptcy, as with uranium recovery licensees, the more aggressive the regulation the better, and quickly.

DSI 10: Reactor Licensing for Future Applicants:

The Commission's policy on future reactors should, without any question whatsoever be that there will be none.

The Commission commits a serious error in assuming that there is any need, desire, or economic capability for any nuclear power reactors in the future. All four of its options should therefore be rejected with no further consideration of standardization, reprioritization, sustained responsiveness, refocus of resources, or single solution -- apart from permanent abandonment of any thought of ever again licensing any new nuclear reactor. The Commission should not waste another taxpayer penny on new reactor designs or standardization or certification.

DSI 11: Operating Reactor Program Oversight:

The trend that we have observed in recent years has been away from reactor regulation, with a major shift of regulatory philosophy from prescriptive conservatism to a risk-based performance-based approach; greater utilization of generic communications and "guidance" to replace enforceable rulemaking, relaxation of technical specifications; the elimination of regulatory requirements deemed to be marginal to safety' and exercise of discretion not to enforce compliance with license conditions. As recent findings at the Millstone, Maine Yankee, Haddam Neck, and other reactors reveals, the NRC has not even exercised enough oversight to realize that its licensees had been failing to abide by regulations for years stretching into decades.

As for Option 1, the "Lessons Learned" from TMI were soon forgotten or never learned at all. Even the staff's wording seems to admit the fact of existing failure of regulation with no intent to improve. The wording of Option 2 also depends on continuation of existing regulatory practice that is not providing an acceptable level of safety assurance. Current processes don't deserve strengthening; they need replacement. For health and safety, "working with the industry" just plain does not work. Among the last things in the world NRC should do is to adopt "business process reengineering." The intelligent, sensible people of our acquaintance who have experience with BPR strongly caution against it.

We see no evidence of any will on the part of the NRC staff to improve licensing, inspection, or performance assessment; in fact, quite the contrary. Despite the claims in Sections A.3 and in Section B on Current Agency Direction, we find no marked changes for the better in NRC enforcement. The programs cited (Marginal to Safety, RRG Implementation Plan, Cost-Beneficial Licensing Action Plan, Continuing Program for Regulatory Improvement, and Tech Specs Improvement Program, PRA Implementation Plan) all appear to work in the opposition direction, decreasing, not increasing real world safety. The Commission must instead insist upon the most rigorous and innovative exercise of all regulatory authority it possesses, especially in view of the aged impaired conditions of many, if not most, reactors.

As for NRC's happy endorsement of the NPR philosophy of "putting the customer first," we remind the Commission that the regulated industry is not its customer; we of the affected public are. We also pay the real costs and burdens of the nuclear power industry. We also remind the Commissioners that, as human beings age, they tend to require more careful, frequent, and expensive monitoring of their health. Their increasing fragility is of concern to their health-care provider. At some relatively advanced age, they are retired. The only option that the NRC should consider is a radical increase in all aspects of regulation, with particular emphasis on more rigorous enforcement and the assessment and full collection of penalties for all infractions of regulations. It won't do for the NRC to shake its head in disbelief after a catastrophic reactor accident and mumble that you just didn't think anything like that could ever happen -- again.

The wording of Option 1 is ambiguous enough to justify the conclusion that only reduction of regulation will be the result. Option 2 provides for co-regulation by the regulator and the regulated; this will not do. There is no

point to "increased opportunities for public involvement in the licensing process" if the outcome is always foreordained in favor the applicant. We have had substantial experience with the NRC licensing process; the proposals in this DSI do not encourage us to expect any real improvements. Here, too, we see a statement that "communication technology" will be used "for efficiency" in ways that will lessen the real opportunities for any effective public input, the concern raised above in these comments. The consequences listed for Option 2 describe our public-interest concerns; NRC should take heed. Its job is not to make the nuclear industry happy. The BPR Option 3 approach is not suitable for strengthening reactor safety.

DSI 12: Risk-Informed, Performance-Based Regulation:

ECNP does not favor the use of risk assessments to determine nuclear reactor regulatory practices; PRA methods are too open to manipulations of the underlying assumptions to be trustworthy. The accident at Three Mile Island, we would remind the younger members of the staff and the Commission who were not involved as were we, came about in part because the ASLB panel had refused to allow intervenors to ask any questions about the probability or consequences of accidents more severe than the safety systems were designed to withstand; the ASLB relied, instead, on staff "engineering judgment" that the probability of a (then-) Class 9 accident was too low to be considered. They were wrong.

Nor is "performance-based regulation" an acceptable alternative to the old defense in depth and redundant safeguards approach that used conservative prescriptive limits and requirements. Under the Performance-Based approach, all is well until it fails. The failure of what had seemed quite all right until it failed could result in a catastrophic accident that NRC still seems to want to pretend will never happen. The current process of Option 1 slips farther down the slope of deregulation and relaxation of requirements. It is not appropriate for protection of health and safety or the environment. The Option 2 adds economics of nuclear power to the risk and performance method. One's assessment of the risk that is acceptable depends a great deal on the profit one expects to gain from taking the risk. Many of us believe that the licensees and NRC have no right to gamble with our lives or the health of our environment. The NRC by law must provide protection of health and safety, not just if it is economically feasible for the nuclear industry. Both Options 3 and 4 skid farther and faster down the unacceptable deregulation/risk-based/performance-based slope toward nuclear accidents. They must be rejected by the Commission.

In Option 4, let the public decide "how fast, how far." Let the public decide what its members consider to be "little risk." Let the public have a major voice in deciding about prevention of equipment failures and human performance factors. As a biologist put it a good many years ago, "I did not give the AEC [now NRC] permission to play around with my genes." That position still holds for all of us. In short, it's time now, for the coming century, for the NRC to be responsive to the public's interests and initiatives relating to low-level radiation and health, not those of the regulated nuclear industry.

As for dual regulation and risk- and performance-based regulation, we recommend rejection of the latter and retention of the former. We view dual regulation as an extension of redundancy of safeguards -- or more than one cook may improve the quality of the broth.

DSI 13: The Role of Industry:

If the NRC believes that "the general public has not voiced significant concerns about steps taken thus far to approve additional reliance on licensee activities," it is only because the NRC has taken no steps to make the general public or the deeply concerned and involved public aware of those steps. The direction that the NRC should be moving with respect to the role of the nuclear industry is the opposite of the one taken. This industry cannot be entrusted with the health and well-being of the American people. It is not the NRC's role to turn over its regulatory decision-making to the regulated community, and to the extent that NRC has done so it is in violation of its Congressional mandates under the AEA, NEPA, Energy Reorganization Act, and APA. And, of course, we're all aware that the FAA approach to aircraft certification has been 100% effective in preventing deaths and injuries in the airline business; this is not the model for NRC to adopt! We strongly recommend that NRC reduce the role of self-regulation by the nuclear industry and recommence the most stringent prescriptive conservative regulatory regime it can devise.

DSI 14: Public Communications Initiatives:

We really don't care so much about the NRC's optimizing its communications with the public. Or responding to public inquiries while fulfilling industry requests. The withholding of the eight DSI papers are proof that the NRC has no intention of abiding by the policy it claims. We want the NRC to listen to and act upon the recommendations that we submit to it. That's very different, and it is not addressed in this document.

DSI 15: Management Philosophy: MISSING; WITHHELD BY THE COMMISSION

DSI 16: Information Resources Management Planning: MISSING; WITHHELD BY THE COMMISSION

DSI 17: Management and Organization: MISSING; WITHHELD BY THE COMMISSION

DSI 18: Staffing and Core Capabilities: MISSING; WITHHELD BY THE COMMISSION

DSI 19: Independent Oversight: MISSING; WITHHELD BY THE COMMISSION

DSI 20: International Activities:

The position of the United States with respect to internationalization of economic trade in nuclear materials and waste should be leadership in prevention of this activity. If, as we believe should be our stance, strict nonproliferation of nuclear weapons and of nuclear materials capable of causing contaminations short of nuclear explosions is to be U.S. nuclear policy, then the NRC should take all measures to discourage and prevent such trade. Every movement of nuclear materials adds to the risks of accidents and accidental releases and of diversions. The NRC should play a constructive role in assisting other nations to maximize control and minimize the movements of these materials and wastes. The beneficial domestic mission of the NRC is to bring about an end of the nuclear industry and of nuclear weapons facilities and activities as expeditiously as possible. Prevention of radiation injury world-wide would be the greatest good that the NRC could accomplish.

DSI 21: Fees:

He who pays the piper gets to call the tune. Only a very strong agency could live up to Option 2, not to allow programmatic decisions to be driven by fees. The Commissioners must be supported in compliance with all mandates and must not permit the payment of fees by the regulated industry to affect any regulatory decisions, enforcement, and collection of penalties. The NRC should, in addition, greatly augment its enforcement actions with mandatory license revocation for violations. It is not the Commission's business to be an aide to the nuclear industry.

DSI 22: Research:

If NRC is to be an effective regulator for the remainder of life of the nuclear industry, it must pursue an expanded regulatory program designed to bring about the safest rapid conclusion of the operating life of existing reactors and other licensed facilities, while maintaining the most stringent regulatory program over those remaining and developing better, safer methods of management for the nuclear materials and wastes already generated. The primary goal of all NRC-related research should be prevention of radiation exposures and biologic damage.

DSI 23: Enhancing Regulatory Excellence:

Please do. But not by most of the means described at pp. 28-34. No measure that decreases regulatory control and allows a greater degree of self-regulation to the nuclear industry is a mark of excellence.

DSI 24: Decommissioning - Power Reactors:

In view of the Commission's apparent preference for minimal control over decommissioning activities, ECNP must recommend a "go slow" approach, both to implementing decommissioning regulations and to actual decommissioning. The question can be asked: why rush? On the other hand, the NRC must move rapidly enough so that a restructured utility industry will not be allowed to walk away from its obligations. ECNP has submitted extensive comments, written and oral, on decommissioning criteria, and we incorporate those comments by reference. It is imperative that NRC require licensees to carry all available insurance and to retain liabilities after a nuclear facility has been shut down. It is also imperative that the NRC incorporate into radiation exposure standards the adverse non-cancer, non-fatal effects on human health of low-level radiation doses and chronic low-dose exposures. These are especially significant with respect to residual radioactivity and the final decommissioning and full decontamination of licensed sites. Complete remediation must be the NRC's goal, and the costs of achieving it must be the responsibility of the licensee whose activities generated the radioactive contamination.

In summary, the Environmental Coalition on Nuclear Power supports all actions by the Commission that will strengthen its regulatory stance and best assure that individuals and whole populations do not suffer adverse health effects from radioactive materials and wastes regulated by the NRC or by any other agency or private entity. We strongly oppose any relaxations or deregulations of operations, practices, or of radioactive materials and wastes.