

DSIG2-
(17)

From: John Davidson
To: WND1.WNP2.SECY
Date: 12/4/96 2:55pm
Subject: DSI COMMENTS

Comments attached. The opportunity to participate is appreciated.



email
~~Acknowledged by card 12/3/96~~
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NOTE TO: OFFICE OF THE SECRETARY
FROM: JOHN DAVIDSON, NMSS
SUBJECT: COMMENTS ON ISSUE PAPERS

Obviously great time and effort already have been expended in this initiative. Conversely, my time to review and consider the extensive, in some case exhaustive and exhausting, material has been limited. Consequently, my comments reflect a limited effort, but the opportunity to participate as a stakeholder is appreciated. Thank you.

GENERAL COMMENTS

1. The near absence of nuclear safeguards throughout the documentation is a serious omission. While nuclear safeguards may not merit status as a DSI, it is relevant to several existing DSI's. A case could be made that the world has entered in new era of domestic and international terrorism in which dynamic nuclear safeguards will be of vital importance. Evidence includes: the elevation of Weapons of Mass Destruction (WOMD), that includes the malevolent use of nuclear and radioactive materials, as a priority for Federal-level attention; Presidential Decision Directive 39 on U.S. Policy on Counterterrorism; the Omnibus Counterterrorism Bill of 1996; and the expansion of U.S. Title 18 to include a wider variety of regulated materials as subject to FBI investigative jurisdiction. Further, various aspects of safeguards could be considered for DSI-2: Oversight of DOE, DSI-4: NRC's Relationship with Agreement States, DSI-6: High-Level Waste & Spent Fuel, DSI-9: Decommissioning of Non-Reactor Facilities, DSI-10: Reactor Licensing for Future Applicants, DSI-11: Operating Reactor Program Oversight, and DSI-12: Risk-Informed, Performance-Based Regulation. In addition to future activities, the issue should be addressed of how the NRC will assure an adequate safeguards inspection and oversight program, in light of already dwindling safeguards resources, expertise, experience, and programs within the NRC. The above does not include the issue of safeguards as it relates to nonproliferation concerns, security of radioactive materials as an international concern, or international trafficking in stolen nuclear materials.
2. DSI's 17 & 18 should be available for comment by staff. Staff input, while certainly not binding, might provide something useful regarding how the agency will continue to perform existing functions, and probably assume additional responsibilities, when senior staff has begun to retire and downsizing may accelerate the loss of vital technical expertise and invaluable experience. This will only continue. In addition, the NRC created a workforce designed primarily to license power reactors. How will NRC transition from this existing workforce to one that will better address the future NRC missions. A DSI on this issue also should include a mechanism for establishing a framework or criteria for setting priorities for scarce resources, establishing a level of support for selected efforts, and weighing long-term and short-term benefits.
3. From a quick review of selected DSI's several bothersome thoughts occurred to me. First, four of five DSI's I reviewed indicate that the Commission's preliminary view

is to continue current programs and practices with perhaps some minor modifications. That says that the NRC is in a very good position for the out years, that its assumptions are valid, that the environment, domestic and international, in which the agency operates will not significantly change, and that future direction of the NRC will be much like the past direction of NRC. If that's the case, then why are we expending all this effort just to validate current practices. Too, why would we need some sort of elaborate plan (Strategic Planning Framework Document) for continuing business pretty much as usual. Second, the Process Paper indicates that approximately 4,500 existing activities, based on staff input, were reviewed. Where is the staff input for where the staff thinks we should be expending resources and aren't, and where the staff thinks the NRC should be heading. An examination of existing activities that the staff is performing is critical to the strategic reassessment, but also consideration should be given to how staff perceives those activities evolving during the next 5 to 15 years.

SPECIFIC COMMENTS ON DECISION-SETTING ISSUES

DSI-2: Oversight of the Department of Energy

This issue paper was very informative and provided a thorough overview of the component parts of the issue. However, Option 4 seems too passive. It is not clear from DSI-2 whether or not the NRC has formally responded to the work and recommendations of the DOE Advisory Committee's, but if this has not occurred, it should. By formally responding to the Committee, NRC could go on record with its concerns and views regarding the impact the assumption of DOE oversight would have on NRC's current programs. Many valid points are made in DSI-2 that should be broadcast outside the NRC to DOE, Congress, and the Executive Branch. In addition, the NRC could make known its views regarding the scope of DOE activities that should be recommended for NRC oversight and the desirability of dividing responsibility for oversight of DOE activities among several external regulators. (The latter could be a significant departure for NRC and present a new set of unforeseen problems.) For example, it is not clear why safeguards and security would not be placed under NRC oversight. The DSI-2 text indicates that these efforts should be initially excluded "to avoid diluting the external regulator's focus on safety." NRC has a long established record of effective safeguards programs that have often been ahead of those employed by DOE while adequately addressing the safety concerns of commercial nuclear power reactors. Too, split responsibility between two agencies is troublesome and holds great potential for mischief, particularly when identifying and resolving a safety-security question and, perhaps more importantly, when responding to an emergency condition at a facility for which NRC is responsible, but must share authority. Safeguards and security should be included, along with safety, in any NRC oversight activities. Also, DSI-2 is correct in recommending that assuming oversight activities must be done incrementally.

DSI-10: REACTOR LICENSING FOR FUTURE APPLICANTS

Under section V., RELATED ISSUES, it is suggested that safeguards and security requirements for advanced light-water reactors be considered. Would existing Safeguards

requirements enumerated in Part 73.55 provide adequate security to the next generation of power reactors or should the requirements be modified?

DSI - 23: ENHANCING REGULATORY EXCELLENCE

DSI-23 fails to identify a compelling need that would justify the pursuit of regulatory excellence as a significant issue or as a direction-setting-issue. As noted in DSI-23, NRC conducts periodic programmatic assessments and self-initiated reviews, remains open to and, as appropriate, responds to industry initiatives to improve NRC regulatory activities and products, continues to receive solicited and unsolicited public input to its deliberations, and periodically responds to external events involving NRC licensees, e.g., TMI or Millstone. In addition, NRC has an established formal mechanism for responding to all allegations; formally encourages differing professional opinions; has a significant historical Incident Investigation Program; and has an active Office of the Inspector General. These efforts represent a wide range of approaches and all move the agency towards its goal of regulatory excellence.

Several points made in DSI-23, along with the two options, merit comment. First, it is stated that recent initiatives -- downsizing, costcutting, National Program Review -- have the potential to inadvertently create an attitude among the staff that regulatory efficiency is a priority objective as an alternative to the fundamental commitment to regulatory excellence and effectiveness in implementing NRC's health and safety mission. Yet, no evidence is cited to suggest that this has occurred or is in any way imminent. It could be stated that recent initiatives would require an additional level of vigilance on the part of the NRC staff to assure that the public health and safety were not negatively affected. It may be a disservice to staff to suggest it would be so easily gulled into abandoning a longstanding obligation and sense of duty to protect the public health and safety.

The paper suggests that 1) there appear to be opportunities to further improve NRC's proactive approach in pursuit of regulatory excellence 2) too few actions have been taken to optimize rules, and 3) there needs to be developed an NRC organizational culture insisting on excellence. In order, opportunities do not equate with needs, and just because an opportunity exists does not mean that during austere times the resources and personnel should be spent. The luxuries of staff time and resources do not exist to methodically fine tune all the regulations on the books and continue its primary mission of protecting the public health and safety. Regarding organizational culture, it may come as news to many on the staff that an insistence on excellence needs to be introduced to the NRC. Insistence on excellence is something that every manager and staff member can do every day without the benefit of a senior level management review group.

The consequences listed for the Options need comment. For Option 1 a consequence is that visibility and recognition of efforts to improve NRC's regulatory framework would be highest for senior managers and lowest for working staff. It is not clear why this would be so. This consequence would seem to fall naturally under Option 2 because Option 2 creates a new special senior management group to direct accelerated efforts to improve the framework and

consequently, it would seem, reap the rewards and visibility for any success. There is also a missing consequence for Option 2, the option that creates a new bureaucratic creature through a seven step process. An effort of this magnitude may have a negative effect on the stability of the regulatory base. If numbers of regulations, guidance documents, procedures, or practices are undergoing review with the likely prospect of being changed, what will be the effect on licensing actions that are underway or contemplated? This potential impact, along with the additional burden on diminishing staff and resources that Option 2 represents, should be very carefully considered in terms of cost and benefit. Consequence 3 for Option 2 asserts that the probability for error or omission would decrease, but it is unclear by what measure this decrease would be determined or if the decrease would be significant. The same assertion could be made for Option 1. Consequence 4 for Option 2 asserts that all NRC organizational levels would be affected, but its not clear why the entire NRC would be affected, and not just those NRC Branches, Divisions, or Offices involved in the enhancement review.