DSIG2

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NRC STRATEGIC ASSESSMENT AND REBASELINING INITIATIVE

DIRECTION SETTING ISSUE COMMENT FORM

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PLEASE CHECK ONLY ONE:

- ✓ DSI 2 - Oversight of the Department of Energy
- ___ DSI 4 - NRC's Relationship with Agreement States
- ___ DSI 5 - Low-Level Waste
- ___ DSI 6 - High-Level Waste
- ___ DSI 7 - Materials/Medical Oversight
- ___ DSI 9 - Decommissioning - Non Reactor Facilities
- ___ DSI 10 - Reactor Licensing for Future Applicants
- ___ DSI 11 - Operating Rector Program Oversight
- ___ DSI 12 - Risk-Informed, Performance-Based Regulation
- ___ DSI 13 - Role of Industry
- ___ DSI 14 - Public Communication Initiatives
- ___ DSI 20 - International Activities
- ___ DSI 21 - Fees
- ___ DSI 22 - Research
- ___ DSI 23 - Enhancing Regulatory Excellence
- ___ DSI 24 - Power Reactor Decommissioning
- ___ General

COMMENT: Comments attached

Acknowledged by card 11/22/96

New Mexico Comments
DSI2

U. S. NUCLEAR REGULATORY COMMISSION
STRATEGIC EFFECTIVENESS FRAMEWORK

The oversight of the NRC Strategic Assessment and Rebaselining initiative describes the need for the NRC to emphasize the decommissioning of aging nuclear reactors and to place more emphasis on NRC as an agency to improve the effectiveness of regulatory by-product licensees. The NRC should in its overview and also within its document relate by-product regulation effectiveness to state/NRC agreement programs to the effectiveness of regulating by-product material licensees in the United States.

In the Introduction, Paragraph 1, of the NRC Strategic Assessment and Rebaselining Strategic, it is mentioned that Federal budget-cutting and downsizing are resulting in a decline in appropriated NRC resources. This statement gives the impression that NRC is still receiving budget allocations from Congress.

The New Mexico Radiation Control Program applauds the statement on page 8 that one of the goals of the NRC is to ensure that "its regulations are consistent with other Federal regulations, nationally and internationally recognized standards, and State regulations to the greatest extent possible." This statement implies that regulation development should be a two-way street.

The description of Mission-Critical Strategic Arenas on page 12 does not address resources provided by Agreement States to the NRC in implementing NRC-compatible programs. Likewise, the continuation of the description of Mission-Enabling Strategic arenas in building public trust and confidence on page 14 fails to address building trust and confidence in the regulatory programs administered by Agreement States. The NRC should implement an NRC/Agreement State regulatory excellence initiative.

The description of the management of NRC human resources on page 18 ignores the Agreement States Radiation Control Programs which are the primary resources for the regulation of all facilities other than nuclear reactors. The NRC should consider the fact that Agreement State programs are a primary resource for the NRC and for the Nation. The Agreement States presently regulate almost 3/4 of all radioactive material licenses in the country. The description of NRC's financial management predicament on page 19 brings up a possible solution: The NRC should approach Congress about doing away with the 100% cost-recovery requirement presently in effect. If this is not a viable option, the possibility of revising the Atomic Energy Act to allow transfer of program regulatory authority to the States should be explored with Congress.

The statement made in paragraph 5, page 21, that "Regulations should be coherent, logical, and practical apparently conflicts with NRC's past insistence that regulatory compatibility requirements must be met by all Agreement States, even if those states have no licensees affected by those requirements. Likewise, NRC's track record with Agreement States has shown NRC not to be open in its regulatory development process. Traditionally, NRC has formulated proposed regulations, and although comments are solicited from the Agreement States on these proposed regulations, they are usually solicited over a protracted time frame and such comments are usually given only cursory notice. The NRC should establish an integrated regulatory development methodology with the Agreement States when NRC regulations are reviewed for change.

DIRECTION SETTING ISSUE PAPER #2
"OVERSIGHT OF THE DEPARTMENT OF ENERGY"

1. The U. S. NRC should coordinate more closely with the Conference of Radiation Control Program's E-20 Committee in its current strategic assessment of NRC's regulatory activities regarding the U. S. DOE. Some Agreement States (particularly those with major DOE facilities) have had considerable experience in dealing in both a regulatory and a nonregulatory way with the U. S. DOE.

2. On page 13, paragraph 5 of DSI2, it is noted that the Commission can, under the Agreement States program authorized by Section 274 of the Atomic Energy Act, relinquish its authority and allow a qualified state to assume regulatory authority over radioactive materials in question. This is with the proviso that the state has a program that is adequate to protect public health and safety and is compatible with the NRC program. With the withdrawal of NRC funding of Agreement State training needs, it is doubtful that most Agreement States will continue to receive basic standardized training adequate to maintain compatibility with NRC programs.

3. On page 16, paragraph 3 of DSI2 it is noted that the Advisory Committee recommended that OSHA be responsible for worker safety at DOE facilities, including radiological safety. Realistically, the question might be asked is, realistically, how much experience does OSHA have in radiological safety regulations and requirements?

4. On page 19, paragraph 1, of DSI2, it is estimated that implementation of the Steering Committee's Option 1, that is the support of broad responsibility for NRC regulation of DOE, would result in the need of an additional 1100-1600 FTEs by NRC, at a cost of between $150-$200 million annually. Would it not be a far wiser decision to continue to encourage Agreement State regulatory authority at increased levels and restore Agreement State funding at an estimated cost to NRC at only one million dollars annually?

5. On page 28, paragraph 5 of DSI2, Suboption 3B calls for the acceptance of NRC jurisdiction for DOE facilities on an incremental basis only. This would appear to be the wisest option available. Under this option NRC would endorse existing law, under which a DOE facility could co-use under the Commission's jurisdiction as a result of a DOE privatization initiative, or a new facility could be one of the facility types noted in Section 202 of the Energy Reorganization Act. This option would involve a lesser chance of a "pick and choose" mentality on the part of NRC, under which NRC would only regulate what it found appealing and let other regulatory entities deal with whatever was left.

6. The New Mexico Radiation Control Program agrees that the wisest possible option available to NRC would be Option 4, that is that NRC take no position on accepting broad responsibility for DOE facilities. NRC would continue its jurisdiction over those DOE facilities it now regulates' and would accept responsibility for regulating additional DOE facilities on an incremental basis consistent with existing statutory authority.

7. The assumption of jurisdiction over NARM at federal facilities by Agreement State Radiation Control Programs would be extremely difficult unless mandated by Congress. The regulation of NARM at these facilities should be assumed by the NRC.

8. The proposal to have DOE facilities regulated by an organization other than DOE (self - regulation) has some merit. However it is questionable as to whether or not the Nuclear Regulatory Commission (NRC) should be the Agency of choice or the only agency selected for consideration. The reasonable approach would be to assume that the radiation protection regulations as they exist would simply be applicable to DOE facilities and operations and employees. However, the scope of activities which need to be regulated by an independent agency should be carefully considered in the context of national security and current NRC regulatory authority which does not extend to naturally occurring radioactive materials, accelerator produced materials and machine produced radiation. The activities which concern and impact most states and the general public involve the end product of some nuclear activities which are several categories of radioactive wastes or several categories of mixed hazardous / radioactive wastes. These endpoint waste products and emissions from production or fabrication facilities should be able to be addressed by an independent agency without the need to be embroiled within the classified, national defense cloak of secrecy which must be employed within the confines of the processing or fabrication facilities themselves. Activities currently classified for valid national defense reasons at DOE facilities should remain under the jurisdiction of the DOE. Operations and facilities which do not need to be operated as classified should be regulated as any other radioactive material or radiation producing or using facility would be in the private sector. The classified label appears to be over utilized by facilities within the DOE to promote the exclusion of external regulatory agencies or entities.

9. The concerns over activities at DOE facilities is not centered over the radiation safety for DOE employees but over safety issues more related to physical accidents and incidents at radiation facilities unrelated to radiation exposures AND the release of radioactive materials whether through facility emissions to the environs or through subsequent release of radioactive contaminants after disposal of radioactive wastes on-site at DOE facilities. There is a need to investigate disposal of radioactive wastes and their disposal sites which have in many instances been constructed, used and abandoned without DOE meeting the same requirements that a commercial disposal site would be required to meet under independent regulatory authority. These are the concerns which we believe have prompted the initiative for independent regulation of DOE facilities.

10. In the NRC's proposed options there are different statements on the need for additional resource allocation from congress for the NRC to take on additional tasks. We agree that the need for additional resources would exist for the independent agency assuming the regulatory oversight of certain, defined activities. However, consideration should be given to allocating the currently utilized resources of the DOE used in self- regulation programs to the independent agency proposed to assume those programmatic activities. This is reasonable since the DOE currently expends those same resources in the self- regulating program which DOE implements.

11. NRC's proposal to allow a DOE self-audit program as a regulatory mechanism or part of a regulatory mechanism coupled with the informal licensing or permit process to exclude the general public and other stakeholders is unacceptable and would in essence leave the regulatory scheme "status quo " and provide no added value to the general public or other stakeholders. Any outside regulatory program for any DOE facilities to be regulated under this new approach should assure that DOE facilities are regulated exactly as any non-DOE facility is regulated under the same regulations and implementation and enforcement of those regulations.

12. States currently implementing the authorities for radiation control programs and for mixed wastes under RCRA should be considered as one of the options to external regulators for DOE facilities exclusive of the areas which can validly be classified due to valid national security needs. Agencies without prior regulatory experience with a need to essentially "start from scratch" should be excluded from consideration. In addition, consideration to amending the Atomic Energy Act to allow states to regulate radiation sources of any type without having to undergo the cumbersome " Agreement State Process" through the NRC should be undertaken by congress. States could implement the programs through coordinated efforts with the Conference of Radiation Control Directors serving as the conduit for assuring conformity of regulatory programs throughout the country. NRC could still implement the reactor safety programs where NRC has the expertise and is placing its emphasis. States can implement all other radiation control programs to include DOE facility operations other than reactor or reactor waste programs.