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General Comment

See attached file(s)

Attachments

Comments on NUREG-1614 Vol 7, Final

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Comments by Jeffrey M. Skov
As Requested by the U.S. Nuclear Regulatory Commission (NRC)
On the Agency's Draft Document NUREG-1614, Volume 7,
"Draft Strategic Plan, Fiscal Years 2018–2022"
Submitted Under Docket ID NRC-2017-0153, Pursuant to 82 FR 44858
October 25, 2017

I am pleased to submit the following seven comments on the agency's draft strategic plan for Fiscal Years 2018-2022. Thank you for providing the opportunity.

1. On p. 5, add "and subsequent disposition" after "use" in both the Safety Strategic Goal and the Security Strategic Goal.

Basis: Reflects the agency's continuing responsibility to assure the safety and security of radioactive materials *after* their use; i.e., during post-use handling, storage, transportation, and (to the extent prescribed by law) ultimate entombment/disposal.

2. On p. 5, add the following additional strategic goal: "Effectiveness Strategic Goal: Ensure identified instances of degraded agency effectiveness are addressed as expeditiously and responsibly as possible."

Basis: Addresses the *generic* import of the holding in the 2013 *In re: Aiken County* ruling by the U.S. Court of Appeals for the District of Columbia Circuit. That ruling documented an extraordinary degradation in the NRC's effectiveness.

3. On p. 5, add the following after Safety Objective 1: "Safety Objective 2: Ensure NRC's statutory mandates under the Nuclear Waste Policy Act are fulfilled as expeditiously and responsibly as possible."

Basis: Addresses the *specific* violation identified in the 2013 *In re: Aiken County* ruling by the U.S. Court of Appeals for the District of Columbia Circuit.

4. On p. 5, add the following after Security Objective 2: "Effectiveness Objective 1: Comprehensively address instances where the NRC is held to be in violation of statutory mandates by a court of competent jurisdiction."

Basis: Supports the Effectiveness Strategic Goal by specifically addressing instances of seriously degraded agency effectiveness that are identified by a court of competent jurisdiction.

5. On p. 5, immediately after new Effectiveness Objective 1, add the following: "Effectiveness Objective 2: Take action to request and secure funding necessary to accomplish statutory mandates, or report the circumstances and consequences of funding shortfalls to the Congress and the public."

Basis: Supports the Effectiveness Strategic Goal by ensuring the agency requests funding to implement its statutory mandates effectively, and to remark on funding shortfalls, both in terms of their circumstances and their consequences.

6. On p. 9, add the following, in its entirety, immediately before "Security Strategic Goal: Ensure the Secure Use ... of Radioactive Materials":

Safety Objective 2: Ensure NRC's statutory mandates under the Nuclear Waste Policy Act are fulfilled as expeditiously and responsibly as possible.

Fulfilling NRC's statutory mandates under the Nuclear Waste Policy Act addresses numerous radiation safety concerns associated with growing accumulations of spent nuclear fuel (SNF) at the reactor plant sites. These concerns include criticality safety in the plants' spent fuel pools (see NRC Generic Letters 2016-01, 1996-04, and 1978-11; NRC Information Notices 2012-13, 2009-26, 1995-38, 1993-70, 1987-43, and 1983-29; and NRC Office of the Inspector General Report No. OIG-15-A-06); potential SNF misloading events (see NRC Information Notice 2014-09), and canister degradation (see NRC Information Notices 2012-20 and 2013-07).

Note that restarting the Yucca Mountain licensing proceeding does not presuppose a favorable outcome. However, NRC owes it to the nation to render a decision one way or the other. Policymakers can make little use of the insight that the agency is currently providing—that Yucca Mountain may or may not be licensable as a repository for SNF and other high-level radioactive waste (HLRW). If Yucca Mountain is not licensable, then policymakers can make other provisions. That is, either way, the safety concerns identified above would be addressed.

This objective is consistent with the Commission's direction concerning Yucca Mountain contained in its Order CLI-10-13, dated April 23, 2010: "[W]e think the prudent course of action is to resolve the matters pending before our agency as expeditiously and responsibly as possible."

Safety Strategy 9: Restart the Yucca Mountain construction authorization proceeding and render the decision required by Sec. 114(d) of the Nuclear Waste Policy Act.

CONTRIBUTING ACTIVITIES

- Plan the activity.
- Request and secure funding. Where funding cannot be secured, report both the circumstances and the consequences of that shortfall to both the U.S. Congress and the public (consistent with Effectiveness Objective 2, as well as the following Principles of Good Regulation: Independence, Openness, Efficiency, Clarity, and Reliability).
- Execute the plan effectively and efficiently.

Basis: Self-explanatory.

7. On p. 13, add the following, in its entirety, after the last words currently on the page:

Effectiveness Strategic Goal: Ensure identified instances of degraded agency effectiveness are addressed as expeditiously and responsibly as possible.

The agency fills a vitally important role in assuring public health and welfare with respect to the use and subsequent disposition of radioactive materials. The reputation of the agency can be greatly

diminished if serious instances of degraded agency effectiveness are not addressed. The agency is subject to double criticism: what happened that caused the degradation and why hasn't the agency addressed it? Therefore, instances where the agency's effectiveness is degraded must be addressed immediately and comprehensively. The credibility of the agency as a nuclear safety regulator depends on it.

Perhaps the worst cases are court-adjudged violations. Indeed, it is the 2013 *In re: Aiken County* ruling by the U.S. Court of Appeals for the District of Columbia Circuit—and the *generic* import of that ruling—that led to this strategic goal. That ruling documented an extraordinary degradation in the NRC's effectiveness. The Court held that the agency was "defying" and "flouting" federal law, "has continued to violate the law," and that, "by its own admission, . . . has no current intention of complying with the law."

This was a very public and very extraordinary rebuke of the agency's effectiveness. Its sting was even more intense because the Court noted that it had warned the agency twice beforehand, once in 2011 and again in 2012. The Court described that second occasion as a "clear warning."

The Court's use of the term "flouting" is also damning—the Court said that "the Commission is simply flouting the law." To flout the law means to hold it in contemptuous disregard. What trust does that inspire by the general public—a nuclear safety regulator that holds U.S. law in contemptuous disregard?

And where was NRC counsel through this? Where was the agency's inspector general?

All stakeholders are invited to review the Court's opinion. It is available at this web address:

[https://www.cadc.uscourts.gov/internet/opinions.nsf/BAE0CF34F762EBD985257BC6004DEB18/\\$file/11-1271-1451347.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/BAE0CF34F762EBD985257BC6004DEB18/$file/11-1271-1451347.pdf)

Finally, please note that while *court-adjudged* instances of agency effectiveness degradation are obviously the most conspicuous, this strategic goal is intended to be more comprehensive than that. NRC is a continuous learning environment. We are open, efficient, clear, and reliable. This approach—proactively addressing rather than ignoring degradations in the agency's effectiveness—is intended to be broadly applied.

Effectiveness Objective 1: Comprehensively address instances where the NRC is held to be in violation of statutory mandates by a court of competent jurisdiction.

The actions prescribed by this effectiveness objective are straightforward and commonsensical. They will be familiar to executives and managers in both the public and the private sectors. They will also not be foreign to persons familiar with how NRC ensures the effectiveness of its own licensees in meeting the regulatory mandates NRC imposes on them.

Effectiveness Strategy 1: Take the following actions for each instance where the agency is held to be in violation of a statute or regulation by a court of competent jurisdiction: determine the cause of the violation; determine whether other statutes or regulations are similarly affected; formulate and implement robust corrective actions to prevent recurrence; and address any criminal component

associated with the violation. Take these actions beginning with the 2013 In re: Aiken County ruling by the U.S. Court of Appeals for the District of Columbia Circuit.

CONTRIBUTING ACTIVITIES

- Adopt this effectiveness strategy into the agency's regulations.

Effectiveness Objective 2: Take action to request and secure funding necessary to accomplish statutory mandates, or report the circumstances and consequences of funding shortfalls to the Congress and the public.

Instances where the NRC does not request sufficient funding to meet its statutory mandates not only cripple the agency's effectiveness, but also suggest negligence. For example, NRC's Congressional budget request documents for Fiscal Years 2012 through 2017 (NUREG-1100, Vols. 27 through 32) include no requests for funding to restart the Yucca Mountain licensing proceeding, contrary to the mandate in Nuclear Waste Policy Act Sec. 114(d), which remained in force over that same period, and despite the "key point" in the 2013 *In re: Aiken County* ruling that "[t]he Commission is under a legal obligation to continue the licensing process." Note that the codification of the Nuclear Waste Policy Act in Title 42 of the U.S. Code (entitled "The Public Health and Welfare") signifies that it is a public health and welfare statute, and therefore reasonably deserving of effective implementation.

Of course, the Congress may withhold funding, but that does not relieve the NRC from making the request. Further, as between the NRC and the Congress, it is the NRC that possesses the expertise and the responsibility to articulate the consequences of such funding shortfalls.

Effectiveness Strategy 2: Ensure each annual edition of NUREG-1100 reflects that NRC has requested sufficient funding to implement in good faith its statutory mandates.

CONTRIBUTING ACTIVITIES

- Adopt this effectiveness strategy into the agency's regulations.

Effectiveness Strategy 3: Report annually to the U.S. Congress and to the public each instance where the agency does not receive sufficient funds reasonably necessary to implement in good faith its statutory mandates, including for each such instance:

- *a discussion of whether NRC (1) was directed to request either no or insufficient funds, and complied with that direction; (2) did request sufficient funds, which were withheld by Congress; or (3) did not request sufficient funds; and*
- *a discussion of the consequences of each instance with respect to (1) public safety and health; (2) environmental protection; (3) the common defense and security; (4) the reputation/credibility of the agency as a trusted, independent, transparent, and effective nuclear regulator, and (5) collateral fiscal impacts (e.g., the ongoing Judgment Fund disbursements to the nation's nuclear utilities flowing from the government's breach of the Nuclear Waste Policy Act "standard contracts").*

CONTRIBUTING ACTIVITIES

- Adopt this effectiveness strategy into the agency's regulations.

Basis: Self-explanatory.