

NOTATION VOTE

RELEASED TO THE PDR

3/23/94

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RESPONSE SHEET

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: COMMISSIONER DE PLANQUE

SUBJECT: SECY-94-011 - MANAGEMENT DIRECTIVE ON USE OF
COMMON PERFORMANCE INDICATORS IN REVIEW OF
THE AGREEMENT STATE AND REGIONAL MATERIALS
PROGRAMS

APPROVED X (in part) DISAPPROVED X (in part) ABSTAIN _____

NOT PARTICIPATING _____ REQUEST DISCUSSION _____

COMMENTS:

See attached comments.

Joel O. Lubenau
Joel O. Lubenau 2/17/94

9403290227 940217
PDR COMMS NRCC
CORRESPONDENCE PDR

Comments via telephone.

250650

SIGNATURE

RELEASE VOTE

DATE

WITHHOLD VOTE

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ENTERED ON "AS" YES _____ No _____

Commissioner de Planque's comments on SECY-94-011:

I approve in part and disapprove in part the staff's recommendations in SECY-94-011.

In my consideration of the staff's recommendations contained in SECY-94-011, I found it useful to return to the progenitor of the staff paper, GAO's April, 1993 report. GAO's comments on the effectiveness of the Agreement States' and NRC's material programs centered on three major concerns:¹

1. "...NRC has not established common performance indicators... (for its two programs and)... Therefore, NRC cannot ensure that it is effectively managing its radioactive materials program..."²
2. "NRC also does not require comparable data to be collected and summarized in the same format for both programs... needed for making informed program decisions through, for example, identifying trends and patterns that signal the need for changes."
3. "For agreement-state programs, NRC does not have specific criteria or procedures to determine when to suspend or revoke an inadequate or incompatible program."

With respect to these concerns, GAO offered two recommendations:³

1. Establish common performance indicators, and
2. Establish specific criteria and procedures for suspending or revoking an agreement-State program.

In SECY-94-011 staff has presented a proposal for common performance indicators and a pilot program to implement them. However, two key related items remain uncompleted at this time. First, the Commission has not approved the staff's proposed draft policy statement on compatibility⁴ and, secondly, the staff has not yet presented to the Commission its proposed response to the GAO

¹GAO Report GAO/RCED-93-90, p. 3. "Results in Brief."

²For the purposes of this part of the discussion, I am using the terminology used by the GAO in its report. However, as discussed later, there has been a lack of consistency in use of terms (which can lead too easily to confusion and misunderstandings) and, in one area, inappropriate terminology has been used. Later I provide specific recommendations to resolve this problem.

³ Op cit., p. 5. "Recommendations."

⁴The proposal, itself, is incomplete in that proposed "indicators" for compatibility have not been developed.

recommendation concerning criteria and procedures for revoking or terminating an agreement.

The proposed pilot program calls for reviews of two regions and two Agreement States by a four person team⁵ which would begin the week of March 7, 1994 and conclude at the end of June, 1994. I see some significant problems with the pilot as proposed.

1. The reviews of the regions would not be equivalent to those of the States in that they would not include "non-common performance indicators," i.e., other indicators presently used in reviews of Agreement State programs⁶.

2. The propriety of subjecting three Agreement States to a review process to determine their adequacy and compatibility which is not in complete conformance with the existing Commission Policy Statement for this purpose is questionable. The latter was approved by the Commission following a process that included opportunity for public comment. Even if the States volunteered for the pilot (which is not contemplated by staff), absent due public notice for public comment, a review process that deviates from the present Policy Statement might not be viewed by the States as having the same standing as a review conducted in conformance with that policy.

3. While the proposed pilot reviews of the three States are being conducted, it is my understanding that staff will simultaneously proceed with reviews of other Agreement States in conformance with existing policy; in effect, creating, albeit temporarily, a dual system of Agreement State reviews.

⁵The staff, at its briefing of the technical assistants on February 7, 1994, indicated that the number of Agreement States to be included in the pilot was increased to three.

⁶ While some indicators currently in use for Agreement State reviews may not seem applicable to Regional reviews at first blush staff should, nonetheless, attempt to apply them in the pilot program. The following provide examples. Regarding the indicator, Legal Authority, which covers legislation and regulations, the Regions may have had some experience or views on the need for changes in legislative authority or regulation to improve Regional oversight of their materials licensees. The review can provide a vehicle for surfacing or exploring such cases. With respect to lab support, evaluation of the adequacy of the regions' contractual arrangements for this should have some merit. Similarly, under the indicator, Confirmatory Measurements, Regional arrangements for calibration of instruments should be evaluated for adequacy. Concerning the indicator, Legal Assistance, Regional materials management and legal counsel views should be sought on whether Regional legal assistance in the materials area is available when needed in materials cases. For the purposes of a pilot program it makes no sense to peremptorily exclude the indicators currently in use in the Agreement State program. Their use could serve to make the Regional reviews more effective by identifying potential problems with the purpose of improving Regional, and therefore, NRC performance in this area.

In my opinion the pilot program, as proposed, is not the best way for NRC to address the GAO comment on common performance indicators. Conducting reviews of Agreement States for the purpose of determining adequacy and compatibility using a process which deviates from the present Policy Statement may not only be unwise but is not necessary to gain experience with common performance indicators in State reviews. It is also premature to proceed with a pilot program for determining adequacy and compatibility of States absent revocation and suspension criteria and resolution of the compatibility issues. However, I note that compatibility and revocation criteria are not issues needed for the pilot program with respect to reviewing NRC regional programs.

Staff should, therefore, proceed with a modified pilot program in which a review team reviews two NRC regions using the "common (programmatic) performance indicators"⁷ recommended in SECY-94-011 as well as the other indicators presently used in the process for reviewing Agreement State programs and collect "operational data" (described as "operational indicators" in SECY-94-011⁸).

The review team should also conduct reviews of three Agreement States under the existing Policy Statement and existing procedures for determining adequacy and compatibility. But additional, supplementary information on the five common (programmatic) performance indicators should also be gathered as needed for the specific purpose, as explained below, of enabling the MRB to evaluate their usefulness in response to the GAO recommendation calling for their use. "Operational data" should also be obtained during the review if this information has not been previously collected by the staff.

⁷ The five "common (programmatic) performance indicators" are:

- Status of Materials Inspection Program
- Technical Staffing and Training
- Technical Quality of Licensing Actions
- Technical Quality of Inspections
- Response to Incidents and Allegations

⁸ In SECY-94-011 reference is made to five "operational indicators." There have been multiple terms used for this group. Most have the common defect of including the word, "indicator." It is essential that NRC collect data on misadministrations, overexposures, lost, abandoned and stolen sources, contamination events and contaminated sites on a national basis to establish a national base for the purpose of, to quote GAO, "identifying trends and patterns that signal the need for changes." I do not approve the use of these data for measuring performance either nationally, regionally or on a State-by State basis at this time. If the data are to be used for this purpose, staff must establish that reasonable bases exist for using "rates" which include unambiguous, quantifiable denominators for determining the rate and that such rates will have statistical validity. Therefore, for the limited purpose here, "operational data" is a clear and specific term that more accurately describes the nature of the information and the purpose for which the data are to be used.

The role of the MRB should be limited to the pilot program and should be to review the reports of the Regional reviews (which should contain information comparable to that gathered in the Agreement State reviews) and reports of the Agreement State reviews (including supplementary information on common [programmatic] performance indicators). The review should focus on these questions:

Would the Agreement State review findings have been different if only the common (programmatic) performance indicators were used?

How useful were the common (programmatic) performance indicators and the other non-common programmatic indicators in evaluating the adequacy of the Regional programs?

What set of common (programmatic) performance indicators would best evaluate the effectiveness of both programs in meeting NRC's goal of protecting public health and safety?