DSI-9
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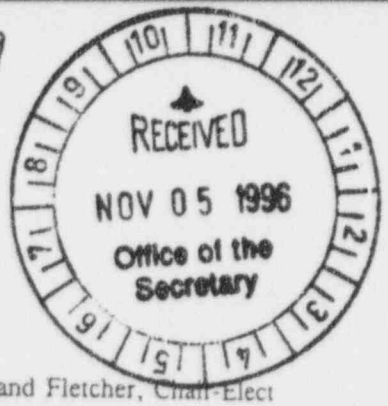
Organization of Agreement States



October 21, 1996

Shirley Jackson, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Jackson:

As you know, there are currently 29 states that have entered agreements with the NRC under Section 274 of the Atomic Energy Act of 1954. The agreement state program is an excellent example of the ability of states to conduct regulatory programs in an effective and efficient manner. The Organization of Agreement States (OAS) provides a vehicle for Agreement States to interact on common issues that affect individual states or all 29 Agreement States.

The OAS has received comments from individual Agreement States on the Direction Setting Issue Papers issued as part of the NRC's Strategic Assessment of Regulatory Activities. These comments have been summarized for each of the Direction Setting Issue Papers and are attached for consideration in this matter. Many of the individual Agreement States will provide state specific comments as well.

If you have any questions, please contact me.

Sincerely,

Richard A. Ratliff for

Robert Quillin, Chair
Organization of Agreement States
Radiation Control Division
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cc: Greta J. Dicus
cc: Kenneth C. Rogers
cc: Nils J. Diaz
cc: Edward McGaffigan, Jr.
cc: Richard L. Bangart
bcc: Thomas Hill, Robert Quillin, Roland Fletcher, Richard Ratliff

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Organization of Agreement States
Comments on
U. S. NRC Strategic Assessment and Rebaselining Initiative

Direction Setting Issue Paper #9
"Decommissioning - Non-Reactor Facilities"

Issue

What should be NRC's strategy to take advantage of new and different approaches to optimize site remediation of the Site Decommissioning Management Plan and other problem sites?

Summary

The Agreement States believe that adequate flexibility should be available in both policy and regulations to allow unique approaches to decommissioning and the funding of decommissioning. To that end the Agreement States support the concepts in Option 2 of the issue paper. Focusing more on the results will allow for innovation of the decommissioning process as well as the resources available. Likewise Option 7 provides an affirmative push to address these issues. This Option also assures that the public will have a voice in the process.

The paper is deficient in that it does not adequately address the issue of Naturally Occurring Accelerator-Produced Radioative Materials (NARM) disposal when mixed with Atomic Energy Act materials. Nor, does it address tailings containing radiocative materials which occur at mills which processed materials other than uranium. The resources needed for decommissioning NARM sites can be significant. The Agreement States will address these issues as they develop in each state. The comments in the "Impacts" section of Option 2 recognize that a failure to adequately assess the decommissioning needs will result in increased costs to both NRC and the licensee involved.

The Agreement States also supported Option 6. This seems to be a practical recognition of the situation in many cases. The long delays in clean-up lose public confidence. If safe and timely solutions can be found using the Superfund approach, then we believe they should be implemented.

Some support for Option 8 exists with the Agreement States. Some, however, question a need for further litigation. It appears the NRC must be in a position to take legal action when a licensee refuses or is unable to take corrective action without a court directive.

COMMENTS OF INDIVIDUAL STATES

Colorado

1. Page 21--Under the discussion of Option 5, "Regulate Source Material Consistently with Naturally Occurring and Accelerator-Produced Radioactive Materials." The statement is made that "Agreement States currently regulate NARM consistently with their own source material licensing program," and therefore, there should be no substantial impacts of this option. This is incorrect. There are many NARM-contaminated sites needing remediation that are not currently licensed. Many were never licensed. Licensing all of these sites would have a major impact on the Agreement States.

2. Page 23 states that if sites were transferred to the EPA, some may not meet the threshold for listing on the National Priorities List. Because this statement is probably true, NRC should evaluate each site and determine if the risk is significant enough to need decommissioning. Transferring the sites to EPA may have the same effect for current sites under SDMP. However, NRC needs to determine the residual contamination levels that will not need remediation so they can applied to existing licensees and currently unknown contaminated sites. The Commission should include this review as a part of its strategy.

3. Agree with the Commission's initial preference, a combination of modified Options 2, 3, 6, 7 and 8, BUT with the inclusion of a review of the decommissioning criteria (Option 3, "Change Residual Contamination Criteria and Review Scenarios") noted above. Implicit in the option to evaluate risk as a factor, NRC should be prepared to again enter into the discussion of "below regulatory concern."

4. It may not be effective for the NRC to hold seminars relative to decommissioning. This would only be effective if 1) a significant number of NRC site owners showed up; and 2) these sites would be decommissioned before other factors changed the ground rules.

Tennessee

Of the "Options" discussed in the Direction-Setting Issues Paper #9 (DSI 9), it is our position that the U.S. Nuclear Regulatory Commission (NRC) should work toward adopting "Option 2: Change the Decommissioning Review Process" and "Option 9: Seek Superfund Authority." Option 2 would provide for the NRC to implement a more "performance-oriented" based decommissioning review process. This would also allow the NRC to concentrate on establishing the National Standards to which a licensee must perform, if he wishes to decommission a facility, and less upon the specific details of how the licensee performs to those standards. Option 9 would provide the NRC equal authority to the Environmental Protection Agency (EPA) in its ability to make all parties involved responsible, both jointly and severally.

The following information is provided to support Options 2 and 9: Site decommissioning is an area for which we believe the NRC may have overlooked the need for a more pro-active stance. The current NRC methodology for decommissioning funding is sorely inadequate to address the future decommissioning needs. Our main concern with the current NRC program for decommissioning at a facility is the NRC's reliance on the "Licensee" maintaining its viability. To the contrary, the NRC should adopt a methodology which does not rely upon any involvement by the "Licensee" in any decommissioning activities. In many cases, the "Licensee" is not the sole responsible party. However under current NRC legislation, the NRC is significantly limited or even prohibited from involving third parties in a facility's decommissioning. Past history has shown us that for the most part, by the time decommissioning activities become necessary, the licensee has neither the resources, nor the ability, to coherently manage a decommissioning project. It seems clear to us that if a "Licensee" remains a viable entity, NRC does not need to become involved in the site's remediation as a matter decommissioning of a facility. Rather as a matter of an enforcement activity. It also seems clear that if a "Licensee" is not a viable entity and there are other parties that are responsible for a facility's contamination, the NRC should be granted authority to seek funding from other parties.

The most beneficial question that the NRC could establish an answer for is "What is meant by the term Clean'?" We believe the NRC could serve the public, the Agreement States, the DOE, and all ot' .r interested parties, as well as themselves, by proposing or establishing definite levels below which regulatory concern is not warranted. This would allow the "Licensee" and the public to know the standards which must be met in order to decommission a facility. This "Clean" policy would also allow for certain sites, currently requiring decommissioning plans, to become less of a burden on the existing NRC resources.

Texas

This discussion appears to focus primarily on source material licensees. The same concerns exist for any major licensee (Broad R&D, Loose Processors, Waste Processors, etc...). States were only mentioned in conjunction with coordination with NRC decommissioning activities. However, the policies and processes that NRC adopts also impact Agreement States and the strategies that are available in those states as well. A discussion of the options follows:

Option 1: The current program doesn't seem to be working.

Option 2: This appears to be a resource problem. It appears a better approach may be to recommend that licensees use a "certified" approach for decommissioning plans (either approve consultants or methodologies). These cases could then receive an expedited review.

Option 3: While there may still be disagreement with the numerical values, this is a valid approach that should be implemented. There should be different criteria between intruder scenario and non-intruder scenario (e.g., maximally exposed individual vs. critical population).

Option 4: This should be considered, but resource requirements may make it a lower priority. Option 6 makes more sense.

Option 5: This may provide resource relief to NRC, but the effect on non-Agreement States should be taken into account in the discussion of this option. The 20 FTE NRC savings have to go someplace. This option merely transfers the problem to the States.

Option 6: This option appears to make a lot of sense, especially if Agreement States could also refer sites to Superfund as well.

Option 7: This is a valid approach, and is already being implemented, as in the case of Dawn Mine Works. This issues paper does not emphasize adequately the fact that these options are already viable.

Option 8: The main impact of this option would be to force documentation and decommissioning before the licensee can funnel money out of the corporation. This is important and should be a standard operating procedure for major facilities with problems.

Option 9: Why duplicate EPA efforts? This only makes sense if Option 6 cannot be implemented.

We concur with the Commission's initial preferences.

Washington

Washington supports a combination of the Options to improve the current decommissioning process--we believe it is appropriate for NRC to allow more realistic dose assessment scenarios, including allowing up to 500 mrem/yr. hypothetical intruder doses (Option 3); adopting an EPA- like approach allowing greater residual contamination in some circumstances but requiring active maintenance and monitoring (Option 4); focusing on sites where decommissioning progress can be made and transferring the stalled sites to EPA (Option 6); and allowing uranium mill tailings impoundments to be used for disposal of similarly contaminated wastes (U, Th, Ra) originating from non-uranium mill sources (Option 7). Additional comments follow:

Option 1: Status Quo -- Oppose. Currently takes too long and is seemingly ineffective in resolving certain cases.

Option 2: Change review process--Allows too much latitude for licensees to proceed down the "wrong road" and waste considerable resources before regulatory agency steps in to approve adequate procedures. If this Option is utilized, recommend modifying the approach to account for those licensees with demonstrated expertise in remediation (or funds to hire outside expertise). As NRC staff are still involved in the final survey, public health would still be assured prior to license termination. Licensees with insufficient capital or experience would still be required to submit decommissioning plans for review. The discussion of sufficient funds is important only to the extent that a licensee can re-address those areas where insufficient remediation has occurred.

Option 3: Change Criteria and Scenarios--SUPPORT. This option is taken as a revision to the framework for 10 CFR Part 61. Modifications to the intruder scenario to allow for the probability of intrusion and site degradation would provide flexibility through increased accuracy (realism).

Option 4: Adopt EPA approach--Although there are some fundamental difference between NRC and EPA disposal requirements, the two methods are not as far apart as stated. Although the NRC analysis for low level waste facilities assumes little active maintenance or controls (as EPA would), in practice, measures similar to hazardous waste facilities are required by NRC to limit the release of radioactive wastes, such as stipulations on the type of cover and maintenance, etc.

Option 5: Dump Source Material on EPA and states--requires legislative change and goes the "wrong way"! Consolidation of the radiation issues is a good idea but the Agreement States generally view NRC as the more appropriate agency to accumulate all radioactive material control! Legislation should be brought forward that transfers NORM and NARM issues to NRC as the central "radiation agency".

Option 6: Stalled Sites to EPA--Taking advantage of EPA's superfund authority is a reasonable way to move on sites where a licensee is not able to take appropriate action.

Option 7: Take aggressive position for lower cost disposal options -- Support. After all, DMC still has a hole to fill!

Option 8: Strong litigation strategy--There is already too much litigation going on. Focus on providing reasonable option for licensees to act responsibly rather than just back them into a corner.

Option 9: Seek Superfund Authority--Not necessary if "stalled sited" can be transferred to EPA! Focus on working with licensees, allowing more realistic criteria and disposal choices. "Superfund" action should always be the course of last resort