DSI-4

STATE OF ILLINOIS DEPARTMENT OF NUCLEAR SAFETY

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Thomas W. Ortciger Director



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December 2, 1996

Mr. John C. Hoyle Secretary of the Commission U.S. Nuclear Regulatory Commission ATTN: Chief of Docketing and Services Branch Washington, DC 20555-0001

Re: Strategic Assessment and Rebaselining Initiative

Dear Mr. Hoyle:

The Illinois Department of Nuclear Safety (Department) is hereby providing its comments on the U.S. Nuclear Regulatory Commission's (NRC) Strategic Assessment and Rebaselining Initiative. Having had the opportunity to reflect on discussions of these issues at two public meetings, these comments are the official comments of the Department and therefore may be different from preliminary views earlier expressed by the Department's staff. The following summarizes our principal comments on the Direction Setting Issues (DSI) our detailed comments on individual topics are enclosed.

Oversight of the Department of Energy (DSI 2)

Should the NRC seek to expand its regulatory authority and responsibilities to include DOE facilities?

NRC's position that, if asked, it could provide adequate regulatory oversight, is the correct posture. The NRC, however, should plan to use the division of radioactive materials regulatory authority that is currently applied to commercial facilities. Agreement States should have the opportunity to regulate materials use at DOE facilities as they would for any commercial entity.



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NRC's Relationship with Agreement States (DSI 4) What should be NRC's strategy regarding states becoming and remaining Agreement States?

The NRC should return to the strategy used prior to October 1, 1996. Specifically, NRC must recognize the many benefits received by the NRC and its licensees from the states and return to a policy of funding training, travel and technical assistance for Agreement States. NRC should use intangible incentives to encourage more states to become Agreement States, and recognize that Agreement States are NRC's co-regulators. If necessary to achieve these objectives, NRC should seek appropriations from Congress for the functions involving Agreement States. Illinois, and probably other Agreement States, are willing to assist NRC in its discussions with the appropriate congressional committees to obtain the necessary funding. However, our support for legislative changes would have been more focused had NRC not chosen to unilaterally impose its current policy on funding Agreement State activities.

Low-Level Waste (DSI 5)

What should be the role and scope of the NRC's low-level radioactive waste program?

As we have expressed before, we strongly recommend that NRC recognize that lowlevel radioactive waste (LLRW) management is a state responsibility, that NRC recognize the progress being made in this arena and reduce its LLRW program. NRC's pursuit of the Commission's preferred option to assume a strong regulatory role in the national program will only serve to confound the progress of individual states.

High-Level Waste and Spent Fuel (DSI 6)

In recognition of current uncertainties, how should NRC approach the present high-level waste situation?

NRC should assume that the important elements of the national HLW program include not only a repository and centralized interim storage, but also on-site dry cask storage and transportation. Simplification of the hearings process, pursuing binding resolution and early negotiation of issues seem worthwhile for the NRC to explore.

Materials/Medical Oversight (DSI 7)

What should be the future role and scope of the NRC's Nuclear Materials Program, and in particular, NRC's regulation of the medical use of nuclear material?

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Although the discussion of this DSI purports to address all material oversight, it primarily addresses the medical area. We support NRC's initiatives to streamline the licensing process, eliminate duplicative or contradictory regulations, and update regulatory guidance for all categories of licensees, not just medical licensees. The use of radioactive material in this country is safe for workers because there are established requirements for users of radioactive materials. The public is protected because of the regulatory community's diligence in ensuring that individuals using radioactive material do so safely. In some cases, it is necessary to modify the regulations to be less prescriptive, but it is not necessary to relinquish all controls over the safe use of radioactive material.

Decommissioning - Non-Reactor Facilities (DSI 9)

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?

The Department continues to object to the radiological dose limit of 15 mrem/yr contained in the proposed decommissioning rule. We have repeatedly objected to this value primarily because the technical justification for this proposal has not been provided, and the dose limit is unnecessarily restrictive. The radiation protection standards in 10 CFR 20 of 100 mrem per year and the 25 mrem per year limit in 10 CFR 40 Appendix A are reasonable and protective of public health and safety and the environment.

Operating Reactor Program Oversight (DSI 11) Given the changes in the external/internal environment, what are the implications for the current strategies for the operating reactor program?

Option 1 describes the general process of oversight that must be applied to any well-managed on-going activity. If this is accomplished properly, Options 2 and 3 naturally become areas subject to review.

Risk-Informed, Performance-Based Regulation (DSI 12) What criteria should the NRC use in expanding the scope in applying a risk-informed, performance-based approach to rulemaking, licensing, inspection and enforcement?

NRC should focus on those areas that constitute the most risk to the public using the best available to accomplish that task. If risk assessments can be relied on to identify the risk contributors, they should be used in the regulatory process where it makes sense to do so. If

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risk assessments cannot be relied on, then more conventional means, or some combination of analyses, should be used. Inherent in risk analyses are uncertainties caused by lack of objective data. The better the data, the more assurance we have that risks can be predicted. Data can be resource intensive to gather. Hence, there is a cost/safety benefit tradeoff. We believe that rigorous Probabilistic Risk Assessment (PRA) should be required of nuclear power plant licensees. They should also meet pre-defined standards for accuracy and completeness, and should be kept current.

Public Communication Initiatives (DSI 14) What approach should the NRC take to optimize its communication with the public?

We concur with the Commission's preliminary views. Public concerns must be identified and addressed as early in the process as possible. Agreement States have routinely asked the NRC for the opportunity to provide early and substantive input into rules and policies being developed by the NRC that have impacts on Agreement States. Option 2, giving priority to early identification of public concerns, appears to address some of the concerns raised by Agreement States. Agreement States, representing regulatory authorities equivalent to the NRC, can use their experience and expertise to contribute toward identification and resolution of issues, and help identify otherwise unforeseen impacts.

International Activities (DSI 20)

What is the appropriate role of NRC in the development and implementation of policies on international nuclear matters?

The discussion in this DSI failed to address the involvement that Illinois and other states have in responding to incidents and issues that result from importation of contaminated items from outside the United States. One could conclude that if NRC can afford to fund international activities with licensee fees, they could also afford to maintain funding for Agreement State training and travel.

Fees (DSI 21)

In making decisions about what activities the NRC should perform in support of its mission, to what extent should fees be considered?

Illinois can appreciate NRC's challenge in carrying out its mission of protecting the public health and safety while complying with statutes that restrict funding alternatives and attempting to implement a system of fees that is fair and equitable. Illinois and the other

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Agreement States face similar challenges. We endorse Option 3 because we perceive it is the option most likely to achieve the result discussed under DSI 4 of restoring funding for Agreement State programs. We direct the NRC to our comments to DSI 4 on the many benefits provided to NRC by the Agreement States. We would anticipate that if NRC insists on charging the Agreement States for assistance from NRC, the Agreement States will sooner or later begin charging NRC for assistance to the NRC.

Research (DSI 22)

What should be the future role and scope of NRC's research program?

Much of the scope of current research is directed at predicting the mode and/or consequences of failure of a particular system or system component. This seems to be the trend regardless of the type of system (i.e., reactor, HLW repository, LLRW facility, tailings pile). There should be a body of experience available, after more than 30 years of performance related observations for such facilities, to allow some research into examinations of how these systems have evidently protected the public from the hazards of radiation. It would be useful, and refreshing, to research the degree and basis for these successes instead of mostly limiting our evaluations to predictions of future failures.

Power Reactor Decommissioning (DSI 24)

What should be NRC's strategy for regulating decommissioning activities at power reactor sites?

There is no technical basis for the selection of 15 millirem per year as a decommissioning standard. With this in mind, we support the concept of revisiting the approach to setting residual contamination criteria and review scenarios independently of the EPA. With respect to the single issue of radiological criteria for decommissioning, we recommend that NRC select Option 3--the NRC staff would move slowly in implementing its current rulemaking approaches. Given that the NRC's approach to this issue is heavily influenced by its apparative options for DSI 9, it is premature to move forward with the current rulemaking.

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We appreciate the opportunity to contribute to the NRC's efforts to determine its future direction. If you have any questions regarding these items, you may contact me at 217-785-9868.

Sincerely, Thomas W. Ortciger

Director

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Enclosure

cc: Jim Lynch, State Agreements Officer NRC Region III

Comments on USNRC's Strategic Assessment and Rebaselining Initiative by the Illinois Department of Nuclear Safety

Direction Setting Issue Paper # 4 "NRC's Relationship with Agreement States"

Summary

The Direction Setting Issue (DSI)-"What should be NRC's strategy regarding states becoming and remaining Agreement States?"

Illinois does not agree with any of the options as formulated by the NRC. Illinois and the other Agreement States should be treated as partners and co-regulators in the effort to protect the public health and safety from radiation in the United States. The statute which created the Agreement State program recognized the growth of the states and their eventual assumption of a "co-regulator" status. The majority of the states are now Agreement States and are fully capable of participating with the NRC in determining the shape of the program.

Illinois agrees, in part, with Option 4 because it is the only option which states that, "the Commission would recognize the experience that lies within the Agreement States." This recognition should occur within the NRC regardless of the chosen strategy option. Illinois disagrees with Option 4, however, because it would still require Agreement States to maintain compatibility with the NRC program but deny necessary federal funds to comply with federal requirements. If states are to be considered completely independent regulators, as in Option 5, the states would stand at arms length from NRC and pay for only those services they desired and charge NRC for any services desired by NRC. While logically consistent, Illinois does not believe such an option is feasible at the present time.

Option 4 has taken the spirit of cooperation between Agreement States and the NRC and reduced it to a destructive game of "tit-for-tat." The NRC's ideas presented in Option 4 are in direct contrast to the views recommended in other DSIs where cooperation with professional societies, international agencies and licensees is stressed.

Illinois agrees with the statement in Option 4 that the relationship between Agreement States and NRC should be based on the Agreement States being considered equal partners. We do not agree, however, with all aspects of NRC's concepts of "coregulators." We propose that the NRC transform its traditional view of the NRC/Agreement State relationship into "strategic partnering." The relationship would be more equal and cooperative than it has been to date. This idea is taken directly from the last paragraph on Page 13 of DSI 20--International Activities. If the NRC is willing to foster such healthy relationships overseas, it should also want to foster equally healthy relationships with regulatory agencies in the United States.

With the above in mind, Illinois favors continuation of certain programs developed in partnership with the Agreement States and presented in Option 3, especially Integrated Materials Performance Evaluation Program (IMPEP) and the Adequacy and Compatibility Policy Statement as revised by the Agreement States September 19, 1996. In addition, we recommend that the NRC: recognize the many benefits received by the NRC and its licensees from the states and return to funding of training, travel and technical assistance; use intangible incentives to encourage more states to become Agreement States; recognize the fact that the Agreement States are partners and co-regulators with the NRC; and seek appropriations for the functions involving Agreement States, with assistance in the form of testimony before congressional committees provided by Illinois and, most likely, other Agreement States. Recognition of the Agreement States' contributions to NRC and NRC licensees would overcome NRC's apparent conceptual block in Option 4 that Agreement States cannot be partners unless they pay their own way to comply with NRC mandated requirements.

Specific Comments

The many benefits NRC and its licensees receive from Illinois and the other Agreement States, without reimbursement, were conspicuously missing from this DSI, resulting in an inaccurate representation of the benefit/cost situation. In September 1996, the Organization of Agreement States passed a resolution pertaining to training and funding that summarizes the services and benefits provided to the NRC and its licensees by the Agreement States. The benefits include:

- A. Illinois and other Agreement States regulate all commercial LLRW disposal facilities and are in the process of licensing all the new commercial LLRW disposal sites. Although the NRC charges a supplemental fee (through its LLRW generator fees) for waste disposal and these fee revenues are not provided to Illinois or the other host Agreement States, LLRW facilities in Agreement States continue to receive waste from the NRC licensees as well as Agreement State licensees.
- B. Illinois and other Agreement States respond to incidents involving transportation of NRC licensed material within their jurisdictions, particularly those involving interstate carriers.

- C. Many Agreement States provide salaries for their staff participating in the NRC IMPEP reviews of Agreement States and NRC Regional Offices.
- D. The NRC has requested and received Illinois and other Agreement State staff lecturers at NRC sponsored training courses without payment of salary for the Agreement State staff time.
- E. Illinois and other Agreement States develop many rules that benefit the NRC, such as well logging, industrial radiographer certification and draft changes to licensing requirements for licenses of broad scope, without compensation from the NRC.
- F. Illinois and other Agreement States have conducted surveys and assisted in the removal of byproduct material from facilities at the request of the NRC.
- G. Illinois and other Agreement States are currently investigating potentially contaminated sites for licenses that the NRC possibly terminated inappropriately.
- H. Illinois and other states monitor the environs of nuclear power plants and other nuclear fuel facilities licensed by the NRC in order to confirm the validity of the NRC licensees' environmental monitoring programs and to confirm that releases of radioactive material to the environment are in compliance with effluent limits, with only partial compensation.

In addition, other considerations that have been omitted from this DSI, are detailed below:

- A. The discussion of each of the options is inadequate because of the failure to discuss the impact of the option on the protection of the public health and safety. The appeal of an option for its bureaucratic logic means little if it would jeopardize the public health and safety.
- B. The NRC states that it requires a minimum of 500 1,000 licensees to have a viable NRC program. Most Agreement States have less than 500 licensees and would remain viable programs even if NRC's byproduct material program ceased altogether. NRC could probably regulate a small state with, say, 100 licenses as well as that state could do itself. However, in such a case it would be inappropriate for NRC to tell the remaining 49 states what to do with their licenses, based on its experience with only those 100 licenses.

C. The NRC does not acknowledge that it would do most of the work on regulations if there were no Agreement States, therefore it is misleading.

There is no evidence that so called "tangible incentives" or seed money without continued support from the NRC would result in any new Agreement States. Funds would be better spent on training, travel and technical assistance to existing Agreement States. While the Commission wants to encourage more states to become Agreement States through intangible incentives, charging them for assistance is a tangible disincentive. Continued funding would send a message that NRC recognizes that NRC and its licensees benefit from new states becoming Agreement States and the overall costs of such regulation on a national basis will be lowered with additional Agreement States. At the public meeting on this matter in Chicago, NRC licensees spoke in favor of the NRC paying for training, travel and technical assistance with their fees.

There are several areas where spending cuts would not result in a reduced level of safety for the public workers, such as, LLRW research, detailed data collection and analysis of operational data and events, and support of international students.

Option 1--Turn the Agreement States Program Over to the Environmental Protection Agency

There are major disadvantages to this option. The EPA currently provides grant money, free training, and semi-annual reviews for its existing programs. Moving the Agreement State program from the NRC to the EPA would not result in any cost savings to the federal government, but rather increased costs for the transition. Considering the current federal government downsizing initiative, it is highly unlikely that Congress would fund a move of the program. Furthermore, and as recognized by numerous diverse commenters at the meeting in Chicago, actions of EPA staff on projects throughout the country does not provide confidence that EPA could administer the Agreement State program in either an effective or efficient manner. Option 1 should not be considered seriously. It would be more appropriate for the EPA to relinquish its claim on the environmental radiation regulatory program to the NRC.

Option 2-Strongly Encourage States to Become Agreement States

This option is unlikely because federal monies will likely continue to be unavailable under current federal government downsizing initiatives. Also, the NRC has been discouraging state participation by recent policy decisions of eliminating training, travel and technical assistance monies. Some Agreement States' experience with trying to negotiate reimbursable or free services with the NRC has not been positive. For example, rather than seriously considering a proposal, the NRC cited difficulties in resolving details of a Memorandum of Agreement (MOA) to rebuff attempts to provide an inspection arrangement for uranium/thorium disposal unit and uranium mill facilities already being inspected by a state for other purposes. Illinois supports the concept of all states becoming Agreement States, but is opposed to the proposal presented as Option 2.

Option 3--Continue the Current Agreement States Program, including Adopting Current Initiatives

Illinois favors continuation of certain programs developed in partnership with the Agreement States and presented in Option 3, especially IMPEP and the Adequacy and Compatibility Policy Statement as revised by the Agreement States on September 19, 1996. This is the Commission's preliminary decision. In addition, we recommend NRC recognize the many benefits received by the NRC and its licensees from Illinois and the other states and return to funding of training, travel and technical assistance; use intangible incentives to encourage more states to become Agreement States; recognize the fact that the Agreement States are regulatory "partners" with the NRC; and seek appropriations for the functions involving Agreement States, with assistance in efforts before congressional committees provided by Illinois and the other Agreement States.

As a sign of its changed view, the Commission should immediately modify its policy and seek Agreement States' concurrence on all rules, practices, and procedures which will become part of the program to which Illinois and other Agreement States will be expected to be compatible.

Option 4--Treat Agreement States as Co-Regulators

The NRC has misinterpreted the term "co-regulator" and Illinois does not support this option as presented. The term "co-regulator" should represent the shared vision of the NRC and the states. The NRC's view of "co-regulator" should be that the Agreement States and NRC have the same health and safety goals. The Agreement States and NRC should approach the co-regulator issue on the basis of shared resources. States already accomplish many tasks for NRC and its licensees and are not reimbursed for such services. The NRC has never taken these services into account. The NRC should not charge states for technical assistance or training as long as it is more effective to have the Agreement States conduct a regulatory program within their borders. The NRC should seek appropriations from general revenues to support functions of the Agreement State program. Regarding the equity issue, if NRC paid Illinois and other Agreement States for services rendered to NRC or its licensees and if NRC recouped all those expenses by fees charged to its licensees as currently done under OBRA, then NRC licensees would be paying these costs.

Option 5-Devolve Regulation of Atomic Energy Act Section 274 Materials to the States

The NRC and the states should begin working on a long term (ten years) goal of implementing Option 5 wherein regulation of byproduct material is vested with the states. In addition, NRC should never consider walking away from regulating licensees in a state where there is no Agreement State program.