

January 22, 1998

SECY-98-011

For: The Commissioners

From: L. Joseph Callan /s/
Executive Director for Operations

Subject: POTENTIAL FUNDING ASSISTANCE FOR AGREEMENT STATES FOR
CLOSURE OF FORMERLY TERMINATED NRC LICENSES

Purpose:

To provide a status of staff efforts to satisfy Staff Requirements Memorandum SRM-SECY-97-188, dated November 7, 1997 and to obtain Commission approval for future actions regarding potential funding assistance for Agreement States for closure of formerly terminated NRC licenses.

Background:

The Commission previously approved the staff's proposal (1) for the discontinuance of detailed reviews by NRC staff of license files and inspections for follow-up on formerly NRC licensed sites identified for further investigation in Agreement States, (2) for the referring of identified cases directly to the Agreement States for follow-up investigation, and (3) to hold the Agreement States responsible for addressing remediation of those sites where excessive contamination is confirmed by inspection (see Staff Requirements Memorandum, SRM-SECY-97-188, dated November 7, 1997). SRM-SECY-97-188 also directed the staff to work with the Agreement States to identify a mutually acceptable mechanism to provide Federal assistance to the Agreement States, such as a general fund appropriation outside the NRC fee base, in dealing with these cases. In that regard, the staff was directed to consider how similar funding was made available to Agreement States in the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) and seek input from the Agreement States on the degree to which they would support such an appropriated funds approach. The Commission requested that in presenting the options the staff should also provide any available information regarding the estimated number of sites and the Agreement States affected, the typical regulatory efforts to ensure appropriate remediation and the associated costs, and any difficulties experienced by NRC and the Agreement States in attempting to require further remediation of these sites.

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Discussion:

The staff prepared and sent (see Attachment 1) an All Agreement States letter informing the Agreement States that the NRC has determined that they are responsible for any radioactive material remaining at a site in an Agreement State, including material originally licensed by NRC or its predecessors, where the license was terminated prior to the State becoming an Agreement State. The letter also requested any available information or estimates on the impact of these responsibilities on the States' resources. Only a few States (AZ, CO, GA, IL, NC, TN, TX, WA) have responded to date. California has previously corresponded with NRC on the question of regulatory responsibility for such sites located in Agreement States. The States' comments can be summarized as follows: (1) the State does not agree with NRC's position that this is an Agreement State responsibility, however, they will protect the citizens in the State, (2) this effort is unbudgeted work for the State and no funds are available, (3) the State cannot provide any estimates at this time since they have not yet received the files from NRC to begin a resource estimate, and (4) the State would expect NRC to pay for any remediation and/or source disposal costs not covered by former licensees. Additionally, Arizona stated that they were not informed of this potential liability when they signed their Agreement, they do not have any resources to address this liability, and they requested that the NRC, as the responsible Federal agency, take the necessary actions to protect the public health and safety of Arizona citizens. Some States have indicated they would take responsibility for the public health and safety and the protection of the environment by conducting the remedial action once funding is provided.

The numbers of sites that may be contaminated and need follow-up are listed in Attachment 2. The number of States with a significant number of sites is relatively small with only two States (New York and California) having ten or more sites with loose contamination and four States (New York, Tennessee, California, and Texas) having ten or more sealed source sites pending. The Commission should note that NRC's contractor, Oak Ridge National Laboratory, is still in the final stage of reviewing formerly terminated licenses. Thus, additional Agreement State sites that may contain unacceptable levels of contamination or unaccounted for sealed sources will likely be identified. Agreement States will be informed of these sites as information becomes available to NRC staff.

Although the transfer of files will result in some unplanned work being transferred to the Agreement States, it appears from the general lack of comment about the appropriated funds approach that a number of States may be able to accommodate this regulatory effort. The most impacted States (California and New York) did not respond and, along with a few other States, may need assistance in both remediation and regulatory effort. However, the resources required by the States to do this work are still uncertain. The States will need a period of time to evaluate the number and type of sites that remain to be followed-up and to make reasonable estimates for the regulatory effort needed. The significant expense of this work transfer is the field survey, site characterization, remedial action planning and the actual remediation of any contaminated site identified. Additional costs will be for Agreement State regulatory oversight and review of proposed remedial actions. Cost estimates will not be available until each Agreement State completes the file review and conducts an initial site survey or assessment, or requires the responsible party, if known, to conduct the survey or assessment.

This process may take a few States up to a year or more to identify which sites are actually contaminated and the status of the site owner or former licensee and whether it may be

possible for the State to seek remedial action under the Comprehensive Environmental, Compensation, and Liability Act of 1980 (CERCLA), as NRC has considered for a few of its contaminated sites. In some cases, additional costs associated with site characterization and remediation may have to be funded by the State, especially if cleanup under CERCLA is not requested or if CERCLA cleanup is requested and denied. The remediation costs will not be known until the extent of contamination is known for the individual sites.

As the Agreement States complete their evaluation of the files transferred from the NRC Regional offices, NRC staff will request that information be provided to NRC on the number of sites that may need remediation, the regulatory efforts necessary to ensure appropriate remediation and their costs, and difficulties likely to be encountered in requiring further remediation. This continuing communication with the Agreement States will be accomplished through our routine program of All Agreement States letters and the routine exchange of information process between NRC and Agreement States. Through this process, staff will identify if funding support is needed and the magnitude of the funding need. Until the Agreement States supply this information, staff believes it is premature to pursue any request to the Administration and Congress for either authorization or appropriation of funds. Information available to staff by January 1999 will be assessed to determine if the need is sufficient to support a request for funds for the purpose of providing support to Agreement States for costs associated with evaluation and remediation of these formerly licensed sites. One approach could be to include the authorization for such funds in the NRC legislative package for the 106th Congress, and include an appropriation for this purpose in the NRC appropriation request for FY 2001.

Appropriated Funds Approach

Per Commission direction, staff evaluated how funding was made available to Agreement States in UMTRCA. In Title II of UMTRCA, Congress expressly authorized up to \$500,000 to be appropriated (for fiscal year 1980) to the Nuclear Regulatory Commission for making grants to Agreement States to aid in the development of State programs to regulate uranium recovery operations under the new requirements of UMTRCA. The House of Representatives' report accompanying NRC's FY 1980 appropriation bill indicated the House Appropriations Committee provided this \$500,000 for grants to States under Section 207 of UMTRCA of 1978. Each Agreement State involved had to submit information that was evaluated prior to the grant being approved. The costs were associated with required infrastructure changes such as legislation, regulations, laboratory equipment, and survey equipment. The funding was provided to the State prior to entering into the amended Agreement, so that the State could meet the new requirement under UMTRCA. In addition, Title I of UMTRCA provided for a Federal/State cost sharing where the Federal government (through the Department of Energy) funded ninety percent and the State funded ten percent of the remedial action costs for certain processing sites at which uranium was produced for sale to any Federal agency prior to January 1, 1971.

Agreement State completion of the work required to review formerly licensed sites does not require the infrastructure changes that the UMTRCA action required. However, the potential costs that the State may encounter to address these sites does have the potential for a significant financial impact on a State. Following the example of UMTRCA in assuming responsibility for sites formerly licensed by the NRC, Agreement States may be accepting a responsibility such that the Federal government may want to provide financial relief. However, NRC has allocated no funds for this purpose and effectuation of the program may require

approval by the Congress (and, for practical purposes, by the Office of Management and Budget), depending on the scope of the program and the size of the amounts involved. The amount needed for such support would be dependent on the number of contaminated sites without responsible parties still in existence, the number of responsible parties without sufficient resources to fund cleanup, and the additional costs for the States to conduct regulatory reviews and oversight.

Only one Agreement State (IL) responded with comments on the concept of NRC requesting appropriated funds. The Illinois comments addressed the potential funding for work already completed by a State and that NRC should work closely with individual States to coordinate the Federal funding with each State's appropriation process. Two additional Agreement States (TN, WA) have indicated in their response to NRC's All Agreement States letter that they would seek funding from NRC because NRC or its predecessor agency terminated the licenses for these contaminated sites. One State (WA) was informally notified that NRC is currently not funding cleanup costs associated with contaminated sites located in Agreement States. California has not yet responded, but that State may also request funding because previous correspondence indicates it believes Agreement States should not have the regulatory responsibility for these sites.

Thus, it appears there may be a need for the Commission to seek an appropriation to assist Agreement States in carrying out their responsibilities with respect to formerly licensed sites. Authorization for such an appropriation could be requested when information is known about the number of sites, the potential costs to Agreement States, and the amount of financial assistance needed by Agreement States. Money would not be requested to fund costs associated with approved CERCLA cleanups, or cleanups by current site owners or other responsible parties. If the Congress grants NRC this authority, the annual appropriation process would be used for requesting the anticipated funding. This approach could provide NRC the specific information needed to support the authorizing legislation request.

If the contaminated sites are cleaned up by the current site owner or the former licensee, or cleanup is authorized under CERCLA, the need for NRC to make a funding request may not arise. In such a case, the costs to an Agreement State may be small or modest, since those costs would be limited to regulatory review and oversight. The State of Illinois supplied some information for the sites that they have closed out. This information indicates Agreement State costs for regulatory review and oversight of a number of transferred sites may be modest. For the thirty two sites that did not require site visits or surveys, they expended approximately 150 hours. For the other twenty two sites, they have expended 300 hours. Only one site required limited remedial action which the site owner completed. The State has yet to perform the final survey before releasing the site for unrestricted use. The State's estimated cost for the total regulatory effort including the final survey is \$51,500. This would close all the formerly licensed sites that NRC has identified, to date, in the State of Illinois.

Recommendation:

The staff recommends that the Commission:

1. Endorse the staff's approach of monitoring the Agreement State implementation of the closure of these cases and collection of information on the costs to the Agreement States.

2. Note that, upon Commission approval, the staff will consult with the Agreement States on funding mechanisms. After the information needed is gathered and the consultation is completed, the staff will present its recommendations, including an assessment of legislative needs.

Resources:

The resources for transfer of the files to the Agreement States and initial coordination with the Agreement States were addressed in SECY-97-188. The ongoing coordination with the Agreement States will be conducted as part of the routine activities of the Office of State Programs. Therefore, at this time, no additional resources are required to implement the actions discussed in this paper. Staff notes that before Agreement States complete their assessments of the transferred files, it is premature to assess the costs to States of remediation, the costs of associated Agreement State program regulatory activities, and the need for Federal funding assistance.

Coordination:

The Office of General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer has reviewed this Commission paper and has no objection.

original /s/ by

L. Joseph Callan
Executive Director
for Operations

Attachments:

1. All Agreement States Letter dated November 14, 1997
2. Table of the Number of Potentially Contaminated Sites in Agreement States

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TERMINATED LICENSE SITES IN AGREEMENT STATES (UPDATED 9/18/97)

Agreement State	Sites Identified by ORNL	Sites Closed	Sites Review Pending	Sealed Sources Identified by ORNL	Sealed Sources Closed	Sealed Sources Pending
Region I						
1. Maine	2	2	0	1	1	0
2. Maryland	31	31	0	14	7	7
3. Mass.	49	49	0	17	17	0
4. New Hampshire	1	1	0	0	0	0
5. New York	36	26	10	37	18	19
6. Rhode Island	4	4	0	4	4	0
Region II						
7. Alabama	3	2	1	14	10	4
8. Florida	3	2	1	5	2	3
9. Georgia	3	3	0	2	0	2
10. Kentucky	3	1	2	5	3	2
11. Mississippi	0	0	0	4	3	1
12. North Carolina	2	2	0	3	0	3
13. South Carolina	3	3	0	1	0	1
14. Tennessee	9	6	3	10	0	10
Region III						
15. Illinois	35	34	1	22	22	0
16. Iowa	0	0	0	3	3	0

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Agreement State	Sites Identified by ORNL	Sites Closed	Sites Review Pending	Sealed Sources Identified by ORNL	Sealed Sources Closed	Sealed Sources Pending
Region IV						
17. Arizona	4	0	4	1	0	1
18. Arkansas	1	1	0	5	4	1
19. California	95	55	40	43	27	16
20. Colorado	13	9	4	5	0	5
21. Kansas	6	6	0	5	0	5
22. Louisiana	1	0	1	1	0	1
23. Nebraska	2	1	1	1	1	0
24. New Mexico	6	6	0	5	2	3
25. Nevada	4	2	2	4	2	2
26. North Dakota	3	3	0	1	0	1
27. Oregon	2	2	0	2	2	0
28. Texas	10	7	3	27	9	18
29. Utah	6	4	2	5	3	2
30. Washington	6	6	0	7	5	2