

December 18, 1998

FOR: The Commissioners

FROM: William D. Travers /s/
Executive Director for Operations

SUBJECT: STATUS REPORT OF THE U.S. NUCLEAR REGULATORY COMMISSION TASK FORCE ON OVERSIGHT OF THE U.S. DEPARTMENT OF ENERGY, IN RESPONSE TO COMSECY-96-053-DSI 2 (REPORT NO. 6)

PURPOSE:

The purpose of this paper is to inform the Commission of the status of the work of the U.S. Nuclear Regulatory Commission (NRC) Task Force (hereafter Task Force) formed to identify, in conjunction with the U.S. Department of Energy (DOE), the policy, legal, and regulatory issues needing analysis and resolution before seeking NRC oversight responsibility for DOE nuclear facilities. This report covers the period September 13, 1998, to December 11, 1998.

SUMMARY:

This paper provides a status report on the work of the Task Force from September 13, 1998, to December 11, 1998. During this period, Congress included language in the FY 1999 Energy and Water Development Appropriations Conference Report that significantly altered the schedule for the completion of ongoing, as well as planned, pilot reports and site visits. The schedules affected included: (a) bringing to closure the outstanding issues for the Lawrence Berkeley National Laboratory (LBNL) report; and (b) implementing the previously established schedule for the Pacific Northwest National Laboratory (PNNL) pilot project.

CONTACTS: Charles J. Haughney, NMSS/ERDF
(301) 415-7275
Patricia A. Rathbun, NMSS/ERDF
(301) 415-7178

In addition, the staff prepared the third draft of the report on the Radiochemical Engineering Development Center at Oak Ridge National Laboratory (ORNL/REDC) and worked with DOE to complete the first draft of the report on the Receiving Basin for Off-site Fuel at the Savannah River Site (SRS/RBOF).

BACKGROUND:

Previous quarterly status reports on the work of the Task Force are found in: SECY-97-206, dated September 12, 1997; SECY-97-301, dated December 29, 1997; SECY-98-080, dated April 14, 1998, SECY-98-149, dated June 26, 1998, and SECY-98-222, dated September 24, 1998.

DISCUSSION:

A. FY 1999 ENERGY AND WATER DEVELOPMENT APPROPRIATIONS CONFERENCE REPORT

The FY 1999 Energy and Water Development Appropriations Conference Report contained language that had a significant impact on the progress of the Pilot Projects. The major provisions are given below:

- Requires DOE to include all appropriate regulatory entities when conducting pilot projects to simulate external regulation at Departmental facilities and not to initiate any pilot projects that do not include: NRC, OSHA, and appropriate State and local entities.
- Notes that the LBNL Pilot Project failed to address many of the issues involving the interaction amongst all the above entities and DOE.
- Directs DOE to address all of the issues involving OSHA and State and local regulation of worker safety and health at the LBNL.
- Directs DOE to provide a report to the Committees on Appropriations on the results of the comprehensive Pilot Project by March 31, 1999.
- Directs DOE to initiate a pilot project for a multi-program non-defense laboratory such as Argonne National Laboratory or Brookhaven National Laboratory (which includes a large accelerator).
- Directs DOE not to conduct simulations of external regulation at sites with responsibility for weapons activities.

B. LBNL Pilot Project

NRC staff provided comments to DOE on the latest version of the report. NRC comments have not, as yet, been addressed, and the document has been placed on hold by DOE until the actions requested by the Congressional Appropriations Committees can be finalized. DOE has been working with OSHA to develop a process to respond to the concerns expressed by the Committees. OSHA and DOE have prepared a draft work plan for the completion of

the LBNL Pilot. On December 10, 1998, NRC staff met with DOE, OSHA, State of California Department of Radiological Safety, LBNL, and the University of California in San Francisco, California, to finalize this new work plan and to establish the schedule for the subsequent on-site work at LBNL. New on-site work is planned for January and February 1999, allowing adequate time to meet the March 31, 1999, deadline established by the Committees for submitting a comprehensive Pilot Project report.

C. ORNL/REDC

NRC staff sent the third draft of the REDC report out for comment on September 28, 1998. The outstanding issue of criticality safety is being resolved to the satisfaction of both agencies. In addition, the two agencies have agreed on the extent of information exchange related to Safeguards and Security interface issues needed to accomplish safety reviews. DOE has set December 11, 1998, as the milestone for completion of as much writing on the document as possible. All NRC input to this document has been submitted. DOE is holding internal discussions on how best to address the issues raised in the FY 1999 Appropriations Act Conference Report.

D. SRS/RBOF

On-site work at SRS/RBOF was completed in August 1998. DOE continues to maintain that a horizontal-slice inspection of the entire facility is not needed. The major outstanding issue at SRS/RBOF involves strategic special nuclear material (SSNM) control and accounting (MC&A) as it relates to safety. NRC staff and management met with DOE during the week of December 1, 1998, to discuss this issue.

At this meeting, NRC staff mentioned that its ability to independently assess the functionality and effectiveness of safety at the DOE facilities involves assessing aspects of the safeguards program that are relied upon for safety, in addition to other safety-related programs. DOE staff became amenable to discussing NRC regulation of safety and safeguards/safety interface issues. Some DOE staff members also believe that NRC regulatory attention in the safeguards/safety interface issues could help improve identified MC&A weaknesses and deficiencies.

NRC and DOE staffs are working together to complete all sections of the report and resolve comments. A first-draft "strawman" of the report, prepared by DOE, is to be circulated to the RBOF Team on December 11, 1998, for review. Again, DOE is holding internal discussions on how best to address the issues raised in the FY 1999 Appropriations Act Conference Report.

E. PNNL

DOE put the PNNL Pilot Project on indefinite hold to accommodate OSHA and State participation, as directed by the Appropriations Committees' Report. The Department of Health, State of Washington, sent a letter stating its readiness to participate in the Pilot Program.

F. STATUS OF ADDITIONAL PILOT PROJECTS FOR FY 1999

Future pilot projects remain unidentified at this time. DOE staff has indicated that candidate sites it is considering include the High Flux Isotope Reactor at Oak Ridge National Laboratory and the Fermi National Laboratory.

G. STATUS OF INFORMATION PAPER

The staff is preparing an information paper to set forth NRC findings and preliminary conclusions based on the results of the first year of the Pilot Program. As requested by the Commission in COMSECY-96-053 (March 1997), the focus of this paper is to provide, independent of DOE, an initial consideration of technical/regulatory issues related to external regulation of DOE; identify the potential methods (e.g., licensing, certification) of regulating the identified DOE activities; and describe how the transition would be made from the current DOE system of orders, implemented by contract clauses, to the NRC regulatory framework. The staff anticipates completing this paper in early 1999.

H. DEFENSE NUCLEAR FACILITIES SAFETY BOARD'S FINAL REPORT

As required by Section 3202 (b) of the "National Defense Authorization Act for Fiscal Year 1998" (Public Law 105-85, 111 Stat. 1629), NRC has prepared comments on the report entitled, "Role of the Defense Nuclear Facilities Safety Board Regarding Regulation of DOE's Defense Nuclear Facilities." These comments will be transmitted to both Congress and to the Defense Nuclear Facilities Safety Board upon approval by the Commission.

I. ASSOCIATED MEETINGS

During the past quarter, the Task Force met with or briefed the following entities on the status of Task Force activities:

- NRC staff met with DOE and OSHA to discuss Pilot Program Issues (September 28, 1998).
- NRC and DOE met to discuss outstanding issues related to criticality safety (October 23, 1998).
- NRC management and staff participated in a panel discussion entitled "Regulatory Oversight of the U.S. Department of Energy: Moving from Self-Regulation to External Regulation," in the closing plenary session of the 19th DOE Low-Level Radioactive Waste Management Conference in Salt Lake City, Utah, on November 12, 1998.
- NRC staff presented a talk at the Deactivation and Decommissioning Meeting sponsored by the SRS, Aiken, SC (November 19, 1998).
- NRC and DOE met to discuss external regulation of DOE safeguards/safety interfaces at non-defense facilities (December 2, 1998).

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection.

William D. Travers
Executive Director for Operations