ATTACHMENT 9

STAFF'S EARLIER WORK FROM THE PERIODS 1976-'78; 1984; 1987-'88; and 1992

In January 1976, in response to requests from the 25 Agreement States, NRC established a Task Force to review the question of whether to bring Naturally Occurring and Accelerator- Produced Radioactive Material (NARM) under NRC's jurisdiction. The Task Force recommended [Encl. 1] that the Commission seek legislative authority to:

A. License and regulate NARM in any activity:

- That is part of, or in support of, the nuclear fuel cycle regulated by NRC;
- Where: (a) NARM is manufactured; (b) NARM is incorporated into sources or devices subject to licensing; or (c) NARM is used in the same manner as radioactive materials subject to NRC regulation;
- Where NARM is introduced into products intended for distribution to persons exempt from licensing; and
- Involving the management of NARM wastes that result from licensed activities.

B. Extend authority under Section 274 of the Atomic Energy Act to relinquish authority to regulate NARM to Agreement States and other States having existing regulatory programs for NARM that are determined to be adequate to protect the public and compatible with NRC's program.

The Task Force identified several Federal agencies with some statutory authority over NARM.

- Food and Drug Administration of the Department of Health, Education, and Welfare
- Consumer Product Safety Commission
- U.S. Environmental Protection Agency
- Occupational Safety and Health Administration of the Department of Labor
- Energy Research and Development Administration
- Department of Transportation
- U.S. Postal Service
- Customs Service
- Federal Trade Commission
- National Bureau of Standards
- Department of Interior
- Department of Defense

The Task Force recommended that NRC seek legislative authority to regulate NARM because these materials present significant radiation exposure potential and current controls are fragmentary and non-uniform at both State and Federal levels. Task Force recommendations were presented to the Commission in SECY-78-211 [Encl. 2] in April 1978. The Commission did not take any action, and asked the staff to resubmit the paper for reconsideration after addressing questions about the magnitude of NARM over-exposures, compatibility of the proposed NRC regulatory authority with other agencies, and other issues. In December 1978, staff responded to these questions with SECY-78-667 [Encl. 3], which also contained several conflicting positions. On the one hand, staff continued to recommend that NRC seek legislative authority over NARM.

On the other hand, the Director of the Office of Nuclear Material Safety and Safeguards recommended that NRC:

- Forward the Task Force findings to the Congress, Federal agencies, and State Governors;
- Offer to assist others in developing model control programs; and
- Review NARM control programs after several years to determine further appropriate NRC action.

Moreover, the Executive Director for Operations stated that there are three major issues to be considered in determining what action should be taken:

- Risk to public health and safety;
- Scope and cost of regulatory control; and
- Federal regulatory conflict and NRC's role.

In October 1984 the staff published NUREG-0976 [Encl. 4], entitled "Regulation of Naturally Occurring and Accelerator-Produced Radioactive Materials - An Update." This report presented a review of the status of use and regulation of NARM. For State regulation of NARM, the staff reported that in the 27 Agreement States NARM was regulated in the same manner as byproduct, source, and special nuclear material. In the 23 non-Agreement States, 5 States had NARM licensing programs, 2 States had voluntary or partial licensing programs, and 16 States had at least an initial registration requirement. All Agreement States and 14 non-Agreement States inspected NARM users. Four non-Agreement States conducted partial inspections, while five States did not inspect NARM users. The report concluded that the then currently fragmentary control of NARM leads to licensee confusion and a real potential for excessive radiation exposure to workers and the public.

In March 1988 the staff published NUREG-1310, entitled "Naturally Occurring and Accelerator-Produced Radioactive Materials - 1987 Review." This report presented a review of NARM sources and uses as well as incidents and problems associated with those materials. A review of previous Congressional and Federal agency actions on radiation protection matters, in general, and on NARM, in particular, was provided to develop an understanding of existing Federal regulatory activity in ionizing radiation and in control on NARM. In addition, State controls over NARM were reviewed. Specific questions were examined in terms of whether NRC should seek legislative authority to regulate NARM. The assessment of these questions served as the basis for developing and evaluating several options. The evaluation of the options led to two recommendations. This report was the basis for a subsequent SECY Paper.

In SECY-88-64 [Encl. 5] in March 1988, the staff presented recommendations to the Commission on the issue of whether NRC should seek legislative authority to regulate NARM. This paper noted that the quantities and concentrations of NARM form a continuum in the human world, and the potential hazards of NARM form a continuum ranging from background to potentially significant ones in all facets of life. Thus, any effort to control the risks from NARM calls for an integrated control program to ensure that the dominant hazards are appropriately addressed, without undue attention to the lesser hazards. This paper also reported that Congress had already vested jurisdiction over NARM in the Environmental Protection Agency; Consumer Product Safety Commission; Department of Health and Human Services; and Department of Labor. Moreover, for State regulation of NARM, the paper reported that the 29 Agreement States regulated discrete

sources of NARM in the same manner as Atomic Energy Act material. In the 21 non-Agreement States, 4 States had NARM licensing programs, 2 States had voluntary or partial licensing programs, and 14 States had registration programs, leaving 1 State, Montana, with nothing. All Agreement States and 14 non-Agreement States inspected NARM users. Four non-Agreement States conducted partial inspections, where as five States did not inspect NARM users. To clarify the issue of whether NRC should regulate NARM, the staff presented eight questions.

- Is there a national problem with NARM?
- Are there currently integrated Federal controls over NARM?
- Would NRC regulation of NARM overlap other Federal agencies' programs?
- Are the States' controls over NARM adequate?
- Is NARM a Federal, State, or professional responsibility?
- Would Congress consider NRC responsible for controlling NARM hazards?
- What are the resource implications?
- Would NRC responsibility for NARM regulation change the nature of NRC?

This SECY Paper concluded with two recommendations.

- Refer the issue of NARM regulation to the Committee on Interagency Radiation Research and Policy Coordination (CIRRPC), for the purposes of developing an integrated policy and agency assignments on NARM, in particular, and ionizing radiation, in general, in those situations where agency jurisdictions overlap (e.g., Federal regulatory programs involving health care activities).
- Inform the Governors of the States not within the "Conference of Radiation Control Program Directors (CRCPD) Recognized NARM Licensing States" program that NRC is not seeking legislative authority to regulate NARM because such regulation is a responsibility of the States, and because other Federal agencies already have jurisdiction over most facets of NARM hazards; urge those Governors to take the necessary actions and to assign appropriate resources to become recognized NARM Licensing States.

In the Staff Requirements Memorandum for SECY-88-64, dated July 20, 1988, the Commission approved letters to the President's Science Advisor (who was the chair of the Federal Coordinating Council for Science, Engineering, and Technology that administratively created CIRRPC), and CRCPD. These letters referred the issue of Federal regulation of NARM to CIRRPC.

In SECY-92-325 [Encl. 6] in September 1992, the staff reevaluated and reported to the Commission on the public health and safety significance of discrete sources of NARM, and evaluated whether legislation extending NRC's jurisdiction to include NARM was necessary or desirable. This paper concluded that:

- The Commission should not seek legislative authority to extend its jurisdiction over the regulation of discrete NARM;
- Further NRC efforts related to discrete NARM should focus on assisting EPA in its efforts to apply the Toxic Substances Control Act to NARM and be conducted pursuant to the NRC-EPA Memorandum of Understanding dated March 16, 1992; and
- The NRC should inform the CRCPD, by letter, that the Commission will not seek legislative authority to regulate NARM, and indicate Commission support of the ongoing CRCPD program.

In the Staff Requirements Memorandum for SECY-92-235, dated October 15, 1992, the Commission did not object to the staff position to not seek legislative authority over NARM, instructed the staff to so inform CRCPD by letter, and asked the staff to assist EPA in their efforts to address NARM under the Toxic Substances Control Act.

In September 1996 in Direction-Setting Issue 7 [Encl. 7], the staff identified options for the Commission's consideration for whether to continue to regulate or to revise its oversight of the medical uses of nuclear byproduct materials. The issue paper discussed five options.

- Expand NRC's regulatory responsibility to include x-ray, accelerators, and NARM.
- Continue the ongoing program, with improvements.
- Decrease oversight of low-risk activities with continued emphasis of high-risk activities.
- Discontinue regulation of all medical activities, except sealed sources and devices.
- Discontinue the materials program.

At that time, the Commission favored a combination of the second and third options. But in implementing the third option, the Commission wanted to use a risk-informed performance-based approach.

To summarize the staff's earlier work, SECY Papers from April and December 1978, March 1988, and September 1992 have made recommendations to the Commission on whether to extend NRC's statutory authority. On each occasion the result has been that the Commission did not seek to expand its statutory authority to include NARM.

Enclosures:

1. NUREG-0301, "Regulation of Naturally Occurring and Accelerator-Produced Radioactive Materials - A Task Force Review," published July 1977
2. SECY-78-211, "Final Recommendations of the Task Force on Regulation of Naturally Occurring and Accelerator-Produced Radioactive Materials," April 1978
3. SECY-78-667, "NRC Action on NARM Task Force Recommendation," December 1978
4. NUREG-0976, "Regulation of Naturally Occurring and Accelerator-Produced Radioactive Materials - An Update," published October 1984
5. SECY-88-64, "Naturally Occurring and Accelerator-Produced Radioactive Materials," March 1988
6. SECY-92-325, "Characterization of Discrete NARM and Evaluation of the Need to Seek Legislation Extending NRC Authority to Discrete NARM," September 1992
7. Strategic Assessment Issue Paper, Direction-Setting Issue 7 - Materials/Medical Oversight, September 1996