



NRC NEWS

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“The National Materials Program”

**Prepared Remarks
by Commissioner Peter B. Lyons**

**at the Organization of Agreement States
2006 Annual Meeting
Mobile, Alabama**

September 26, 2006

Thank you for inviting me to speak to you at this year’s annual meeting. I appreciated the opportunity to address you last Fall in San Diego, and I look forward to renewing friendships and establishing new ones while here in Mobile.

Chairman Klein also sends his greetings. The Agreement State program definitely has his attention because of his past experience as a licensee, his service as Chairman of the Texas Radiation Advisory Board, his work over those years with many of you, and his knowledge of the value you add to our mutual goal of protecting the American people. I also want to offer a special thanks to Kirk Whatley and his staff for hosting this year’s meeting.

This is the second OAS meeting I’ve attended. In San Diego, as well as two Conference of Radiation Control Program Directors, Inc. (CRCPD) meetings in Detroit and Kansas City, I indicated my interest in working very closely with the States. In these changing times our need to maintain effective communications is even more important than ever. Therefore, as I mentioned last year, it is my intent to attend your annual meetings as well as those of the CRCPD while I’m on the Commission, if at all possible.

I am pleased to note that with the addition of Minnesota in March of this year, there are now 34 Agreement States. Pennsylvania, Virginia, and New Jersey are all working toward entering into Agreements with the U.S. Nuclear Regulatory Commission (NRC). I agree with the NRC Chairman’s statement to the State Liaison Officers in August of this year supporting the efforts of those States and others to join your distinguished membership.

I look forward to the continued development of our partnership which serves to protect our nation’s public health and safety, security, and the environment. Since joining the NRC, I have seen

our partnership continue to evolve and address a number of new challenges. That was most recently demonstrated on September 12 when representatives from the OAS and the CRCPD conducted their annual briefing of the Commission. The Commission heard your concerns and recommendations.

One of the concerns raised in the briefing was the multiple requests made to you for information from other Federal Agencies and its impact on your State's resources. A request was made that NRC serve as the lead or clearinghouse regarding data requests from the Federal family. I doubt you expected instant action on your suggestion. But the Commission met with Department of Homeland Security (DHS) senior management later that same day and raised this issue by discussing the requests that their Domestic Nuclear Detection Office is making of the States. I was tasked in that meeting with guiding our staff to work with the States toward development of a short paper to further examine this issue. This paper would be further reviewed by the Commission with the goal of providing it to DHS and other agencies for potential action.

Concerns were also voiced in your briefing with inclusion of Category 3 sources in the National Source Tracking System (NSTS). Several Commissioners, including me, noted at the meeting, however, that there are pretty compelling reasons to increase the accountability of Category 3 sources after the system is up and working well with Category 1 and 2 sources. As you know, the current Commission guidance to staff is to develop such a proposal for inclusion of Category 3 sources within three years. But Pearce O'Kelley suggested in that briefing that the NRC should consider approaches on Category 3 sources in the NSTS, differing from those of Category 1 and 2 sources, which might present less of a resource burden to the States. This suggestion was well received, and I'd strongly encourage that you provide thoughts on such options to the Commission, either through the auspices of the OAS or the CRCPD.

As you are probably aware, the NRC is undergoing a number of internal organizational changes designed to better meet new regulatory challenges, such as: the increasing number of Agreement States; the addition of NARM oversight; the President's Global Nuclear Energy Partnership; the potential for several new reactor applications and future plant construction; the continued high levels of public interest in the management, transportation, storage, and disposal of spent nuclear fuel; and our need to increase staffing levels to prepare for the new workload. The goal of the Commission in approving these changes was to provide for more effective organizational focus in areas where our regulatory authority is changing or expanding, and to emphasize the Agreement States' role and contribution to the regulation of radioactive materials.

I know your interest focuses on issues impacting the OAS, but let me take just a minute to describe the other major NRC organizational changes. We recently approved the reorganization of the Office of Nuclear Reactor Regulation to create an Office of New Reactors, to begin operation next January - with full responsibility for licensing and program oversight of new reactor activities. The new Office of Nuclear Reactor Regulation will retain full responsibility for the critical task of licensing and providing oversight to assure safe operations of current operating reactors. We view this separation of responsibility between existing and new reactors as critical to assure that activities related to new reactors do not negatively impact safety of existing plants. In addition, since many of the announcements of new reactor activity have come from the South, the NRC is adding a new construction office to Region II in Atlanta, headed by a Deputy Regional Administrator for Construction.

Additional considerations have prompted the Commission to consolidate the Divisions of High Level Waste Repository Safety, Fuel Cycle Safety and Safeguards, and the Spent Fuel Project Office into a new Office of Nuclear Materials Safety and Safeguards (NMSS) to provide a systematic focus on the management of fuel cycle safety, including uranium conversion, uranium enrichment, fuel fabrication, and transportation, storage and disposal of spent fuel and high-level radioactive waste, and the transportation of radioactive materials regulated under the Atomic Energy Act. Emerging work involving new fuel cycle technologies and facilities and industry's initiatives to increase production were considerations in this reorganization. For example, DOE is discussing a number of possible changes in packaging and handling of spent fuel and high-level radioactive waste at reactor sites or at surface facilities of a proposed Yucca Mountain facility. Also, DOE is preparing to submit a license application to the NRC for a proposed geologic repository at Yucca Mountain in Nevada. In addition, the President has proposed an international initiative, the Global Nuclear Energy Partnership, to develop new proliferation-resistant recycling technologies in order to produce more energy, reduce waste, and minimize the proliferation concerns. This reorganization will also lay the groundwork and prepare the NRC to perform its potential regulatory role for new, expanded, and modified commercial fuel cycle facilities, which may include recycling, transmutation and actinide burning.

But the topic that is of significant interest to all of you in this room - the establishment of a new office dedicated to the nationwide use of radioactive materials - deserves special attention. The Commission approved a reorganization including a merger of portions of the existing NMSS and the Office of State and Tribal Programs into a new Office. The realignment involves merging the functions that exist in the current Division of Industrial and Medical Nuclear Safety with the Office of State and Tribal Programs, and adding to it the current Division of Waste Management and Environmental Protection. The resulting functional alignment will provide for an effective organizational focus on each of these major areas and, as I mentioned earlier, emphasize the role and contribution of Agreement States in the regulation of radioactive materials. In my view, the new Office elevates the visibility of the State and Tribal programs to a major program office level, which represents the current status of the National Materials Program - the title I chose for the talk.

When first approved by the Commission, this office was specifically called the Office of the National Materials Program. But in response to your concerns to specifically reference the States, the Commission approved a staff recommendation to change the office name. As such, it has been renamed as the Office of Federal and State Materials and Environmental Management Programs. While the title is long, it accurately reflects the mission of the new office and its critical functions. Nevertheless, I am personally disappointed that you felt it necessary to make this change. I do appreciate the concerns raised by the proposed title of National Materials Program, as outlined in Barbara Hamrick's and Pearce O'Kelley's June 2006 letters, but it was my view that the NRC should recognize that the collective oversight responsibilities of the Agreement States and the NRC are today the National Materials Program, and that's why I chose that title for this talk.

Your concerns on emphasizing the State role, rather than that of an integrated national program, tell me that further efforts are needed to realize a more effective partnership. As I indicated last year, the NRC and Agreement States operate the National Materials Program under the blended option, working cooperatively and collaboratively. I continue to believe that the relationship between NRC and the Agreement States must continue to evolve and strengthen as we gain further experience in our collaborative activities. I am committed to doing what I can to encourage the evolution of an integrated national program.

I am pleased with the appointment of Charlie Miller as Director and George Pangburn as Deputy Director of the new Office. Charlie and George have both been involved with the national materials program for some time through our Headquarters and Region I offices, respectively. Also, Janet Schlueter has been appointed as Director of the Division of Materials Safety and State Agreements; Dennis Rathbun has been appointed as the Director of the Division of Intergovernmental Liaison and Rulemaking. Larry Camper will remain as Director of the Division of Waste Management and Environmental Protection. Thus, both Janet and Dennis will continue their strong involvement with the States. Charlie will address the new organization in more detail during his remarks tomorrow.

For many of you, there will be little or no visible change in how we accomplish our mission. The new Office, in cooperation with the States, licensees, the public, and other stakeholders, will continue to develop and implement rules and guidance for the safe and secure use of source, byproduct and special nuclear material in industrial, medical, academic, and commercial activities, as well as for decommissioning, uranium recovery, low-level waste, and incidental waste sites. Over time, my goal is that the integration of the functions of both the present Office of State and Tribal Programs and the Divisions of Industrial and Medical Nuclear Safety and Waste Management and Environmental Protection will facilitate consensus building and openness to varying points of view to better reflect the role of the States in managing radiation protection programs. The NRC's relationship with the Agreement State program is an extremely important facet of ensuring public radiation safety and security in our nation. We look forward to your input and continued cooperation as we face new or changing areas of regulation, and to your feedback on the success of the reorganization.

Another major activity in the nuclear materials area is NRC's efforts, together with the States, to address the rulemaking required by the August 2005 Energy Policy Act. As you know, the NRC is proposing to amend its regulations to include jurisdiction over certain radium sources, accelerator-produced radioactive materials, and certain naturally occurring radioactive material. I want to express my appreciation to your organization and to CRCPD for participation in the rulemaking, guidance, and transition plan Working Groups and Steering Committee. Your efforts greatly assisted the NRC staff in developing a carefully constructed proposed rule that was published for public comment. The comment period ended on September 11, 2006. Your thoughtful review and comments on the proposed rule are also appreciated.

An additional major accomplishment of both the Agreement States and NRC staff is issuance of the "Increased Control" or IC requirements for 2,880 licensees that are authorized to possess sources greater than or equal to a Category 2 quantity. Approximately 1,680 of these NRC and Agreement State licensees will need to be inspected within the three-year time frame established by the Commission. All Agreement States and NRC Regions have confirmed their ability to inspect all licensees identified as high risk, based on the jointly developed prioritization methodology. Within the first year, approximately 1,000 licensee inspections are planned. Agreement States and NRC staff expect inspection efforts to continue on schedule, and we appreciate your outstanding support of this program. We have begun to review this program area under IMPEP, and I am pleased to report that no significant or generic issues have been identified.

To ensure the success of the implementation of the IC requirements, the NRC staff and State representatives formed a working group referred to as the Implementation of Increased Controls Working Group. The staff tells me that this working group has been very useful in bringing issues to the table for discussion, including real time implementation issues, and has evolved from

dispositioning licensing issues to recent inspection issues. We appreciate your support to this working group. Over time, we have collectively developed an increased understanding of and resolution for various IC implementation issues. I am confident that the staff will use a similar performance-based, flexible approach to ensuring a consistent national approach to implement other national materials rule requirements.

Another important joint activity is the finalization of the National Source Tracking System (NSTS) Rule. By way of background, a proposed NSTS rule was published for comment in the *Federal Register* on July 28, 2005. The proposed rule was issued under the NRC's authority to promote common defense and security. After publication of that proposed rule, the NRC issued the orders requiring the ICs for the remainder of the licensees possessing risk-significant quantities of radioactive material and, as I just discussed, we issued them under the NRC's statutory authority to protect the public health and safety. The Agreement States also issued legally binding requirements for the IC requirements for their licensees.

The basis provided in the proposed NSTS rule was promulgated under the Commission's authority to promote common defense and security. During the Agreement State review period, several Agreement States opined that the basis for the rulemaking should be under protection of the public health and safety for consistency with the framework established for issuance of the increased controls, which was developed after the approval of the NSTS proposed rule. Comments on the basis for the rule were also received during the public comment period. As a result of these continued interactions, the Commission directed the NRC staff to further evaluate the basis for the NSTS rule. NRC staff recommended proceeding under public health and safety, while noting that timely and adequate implementation of the NSTS can be accomplished under either basis. Staff further noted that the public health and safety basis is consistent with the framework for the increased controls established by the Commission.

Following Commission action, NRC re-published its proposed rule on the NSTS in the *Federal Register* on June 13, 2006. We proposed changing the regulatory basis for the rule from our authority to promote common defense and security to the joint NRC and Agreement States' authority to protect public health and safety. I view this change from common defense and security to be directly responsive to the OAS position expressed, for example, in your letter of August 31, 2004, to Senator Inhofe, Chairman of the Senate Committee on Environment and Public Works, that the Agreement States participate more fully in increased controls over sources. The June notice specifically invited comments on the change in basis.

I appreciate the participation of the States in the development of this rule. As with all rulemakings of significance, we carefully review and consider comments received from the OAS, the CRCPD, and individual States. The Commission will receive the proposed final rule and recommendations from the staff as well as an analysis of all the public comments for Commission deliberation.

I appreciate the level of interest and participation by the States in these very important issues. I firmly believe that we are diligently working together to better control risk-significant sources and to provide a greater level of assurance to the public. I strongly agree with Chairman Klein in his statement at the recent State Liaison Officers meeting that:

“State Radiation Control Programs perform an extremely valuable function for their citizens and for the country as a whole by taking on such a significant regulatory role. The NRC has always been appreciative of these efforts. And, given the added responsibility that the potential renaissance of nuclear power in the United States places upon the NRC, the need to work closely with and rely upon the continued commitment of the Agreement States can only grow greater.”

I look forward to continuing to enhance the NRC and State partnership through our new organization, and look forward to continued success in our joint endeavors. Again, thank you for this opportunity to address you today.

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