



NRC STRATEGIC ASSESSMENT AND REBASELINING INITIATIVE

DIRECTION SETTING ISSUE COMMENT FORM

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PLEASE CHECK ONLY ONE:

- ☒ DSI 2 - Oversight of the Department of Energy
☐ DSI 4 - NRC's Relationship with Agreement States
☐ DSI 5 - Low-Level Waste
☐ DSI 6 - High-Level Waste
☐ DSI 7 - Materials/Medical Oversight
☐ DSI 9 - Decommissioning - Non Reactor Facilities
☐ DSI 10 - Reactor Licensing for Future Applicants
☐ DSI 11 - Operating Reactor Program Oversight
☐ DSI 12 - Risk-Informed, Performance-Based Regulation

- ☐ DSI 13 - Role of Industry
☐ DSI 14 - Public Communication Initiatives
☐ DSI 20 - International Activities
☐ DSI 21 - Fees
☐ DSI 22 - Research
☐ DSI 23 - Enhancing Regulatory Excellence
☐ DSI 24 - Power Reactor Decommissioning
☐ General

COMMENT: See Attachment



Organization of Agreement States

Robert Quillin, Chair
Richard A. Ratliff, P.E., Past Chair

Roland Fletcher, Chair-Elect
Thomas Hill, Secretary

October 21, 1996

U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Sirs:

As you know, there are currently 29 states that have entered agreements with the NRC under Section 274 of the Atomic Energy Act of 1954. The agreement state program is an excellent example of the ability of states to conduct regulatory programs in an effective and efficient manner. The Organization of Agreement States (OAS) provides a vehicle for Agreement States to interact on common issues that affect individual states or all 29 Agreement States.

The OAS has received comments from individual Agreement States on the Direction Setting Issue Papers issued as part of the NRC's Strategic Assessment of Regulatory Activities. These comments have been summarized for each of the Direction Setting Issue Papers and are attached for consideration in this matter. Many of the individual Agreement States will provide state specific comments as well.

If you have any questions, please contact me.

Sincerely,

Robert Quillin, Chair
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Department of Health
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Denver, Colorado 80222-1530

Organization of Agreement States

Comments on

U.S.NRC Strategic Assessment and Rebaselining Initiative

Direction Setting Issue Paper #2

“Oversight of the Department of Energy”

The Organization of Agreement States(OAS) appreciates the opportunity to provide comments on the NRC's current strategic assessment of its regulatory activities. The issues presented in the Strategic Assessment and Rebaselining Initiative Stakeholder Involvement Process Paper represent a wide range of topics that certainly need the input from an active stakeholder process. However, the OAS feels this current attempt still does not address all radiation safety issues in a uniform manner. An example of this is the general tone of DSI#2. The impression from this document is that it is a half-hearted effort to assess the concept and then arrive at a position the agency has maintained for years. This position certainly is not supportive of the concept of a consistent and unified national program for the regulation of all sources of ionizing radiation. A concept the OAS strongly supports.

Some Agreement States(especially those with major DOE facilities) have had considerable experience in dealing with and in some cases regulating the Department of Energy. The NRC should establish a working group including representation of these Agreement States to evaluate the various options available and to develop a regulatory strategy for the DOE that does not create a new mess for the future.

The following summary is a compilation of comments on DSI#2 received from Colorado, Idaho, Illinois, Tennessee, Texas, and Washington.

I. Summary

- The summary states that inventories of spent reactor fuel and radioactive waste “may” be present. There is no question that they are present, as clarified later in the document.
- A definition of “facilities” is needed to assess the magnitude of the issue under discussion. Under the current version there is no inclusion of waste storage, management or treatment “facilities”, although they are mentioned in later in the document. Later, in the report, when the number of “facilities” is given, for those familiar with DOE sites, a basis is not clear.

II. Description of Issues

- The description of DOE facilities or programs omits Nuclear Weapons Assembly/Disassembly Facilities, such as Pantex. These facilities should be described here.
- The discussion of production reactors leaves an impression that some are operational at Hanford. They are not.
- Discussion of facilities needs revision. The high-level waste facility description is not clear. How are the "25 DOE high-level waste/spent fuel facilities" defined? At Hanford there are currently two separate basins where spent fuel is stored and 177 high-level waste tanks divided into 18 tank farms.
- Under DOE self-regulation, the document describes the DOE Order system and mentions that it will be replaced by the 10CFR800 series. It should be noted that this is already well underway with several already completed.
- There is only a brief mention of the certification process that applies to Portsmouth and Paducah. Certification versus licensing was an important issue to the Advisory Committee. Since certification has not proven itself, an option relative to this issue should be considered.
- NRC Funding Mechanisms- The NRC must find a way to insure that the costs associated with the regulation of the DOE are not treated as overhead and distributed among the licensees. Congress should be asked to amend OBRA-90 to reduce the amount recovered from fees by the amount necessary for the DOE activities. DOE should pay for its program directly.
- Authority of Other Agencies- The discussion of the Defense Nuclear Facilities Safety Board(DNSFB) does not include any indication that DNSFB representatives have performed oversight duties and have made recommendations for the improvement of facility and worker radiation safety without infringing on unique national security interests or the DOE nuclear safety program.
- The option of using the DNSFB as an external regulator cannot be accomplished without changing their role from an advisory body to a regulatory body.

III. Discussion

- Decontamination should not be excluded from the regulators purview. The following is taken from Chapter V of the report issued by the Advisory Committee on External Regulation of DOE Nuclear Safety: " We have listened to many days of testimony and have deliberated among ourselves for almost a year. We conclude that every major aspect of safety at DOE nuclear facilities--facility safety, worker protection, public and environmental protection--should be externally regulated." If NRC intends to not regulate decontamination, there needs to be a clear justification why.
- Nuclear Explosives Safety, which was recommended by the Advisory Committee to be excluded from regulation, appears to have been used to arbitrarily exclude some affected facilities from regulation. This was not the intent of the committee. In Appendix E of the report it states: " The subcommittee recommends that nuclear explosives operations other than nuclear explosive safety be subject to external regulation". Reviews based on existing DOE documents, such as facility safety analysis reports, could conceivably provide an acceptable level of oversight without being unduly intrusive of unique national security interests.

- DOE should be held to the same standards as everybody else. Settling for anything less than NRC's high standards would only cause frustration among other NRC licensees and confusion and distrust from the public.
- Today many DOE sites operate in a "fish bowl" of public interaction. Many of them have citizen advisory boards that are very active in site operations. The statement in the first paragraph on page 18 that states that DOE is not accustomed to the "open" NRC process may not be quite right. It may be the NRC that is the unaccustomed one.

IV. Options

- NRC should retain its jurisdiction over the radiological aspects of worker safety and maintain its existing relationship with OSHA.
- It would be difficult for the states to assume jurisdiction over NARM and accelerator produced material at federal facilities unless mandated by Congress. NRC should seek this jurisdiction. Both NARM and accelerator material should be included in external regulatory oversight.
- NRC and EPA should resolve their overlapping responsibility for regulating mixed waste using the suggested approach, i.e. by determining the largest contributor to the waste's hazard and giving the lead to the agency that regulates that hazard.

V. Recommendations

- Based on the record of past omissions, the Department of Energy should not regulate itself. DSI#2 recommends external regulation by DNSFB or NRC. Of the two agencies, only the NRC has the experience necessary to enable a smooth transfer and implementation of regulatory responsibility to an outside organization. While it is politically correct to take no position on accepting broad responsibility over the DOE facilities, NRC should be prepared to express its intent to provide adequate regulatory oversight, if asked by Congress. NRC should also be prepared to discuss the role that might be played by Agreement States, whether by amended agreement or other method. DOE has signified its commitment to external regulation and Congress has indicated an interest in providing legislation.
- NRC should go forward with options (1A/1B) although the initial stance should be that defined in option 4.
- NRC should pursue a gradual phasing in program for the external regulation of DOE facilities.