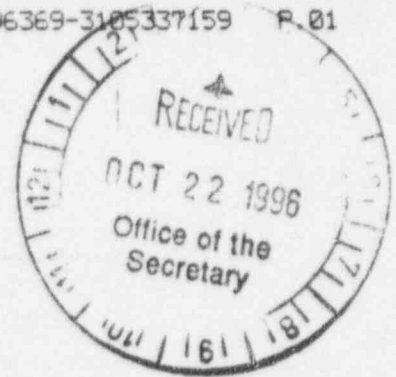


DSI-4

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NYSDOL COMMENTS ON
DIRECTION SETTING ISSUE PAPER #7
 (DSI 7)
 "MATERIALS/MEDICAL OVERSIGHT"



In keeping with our comments on Direction Setting Issue 4 (NRC's Relationship with Agreement States), we strongly recommend adoption of Option 5, turning over all regulatory authority for Atomic Energy Act (AEA) materials to the states, which could be preceded by Option 3 during a transition period.

Option 5 is in accordance with the recommendations of the NRC National Performance Review Steering Committee, and in accordance with the National Academy of Sciences Institute of Medicine recommendations for NRC's medical regulation program.

We would also emphasize again (as in our comments on DSI 4), the economics of the situation. Option 5 is the only reasonable hope that NRC licensees have to contain or reduce their fees, since the other options would make only trivial differences. Eliminating 50% of NRC's remaining licensees, for example, would only eliminate 50 staff positions according to this paper. However, there is no estimate of the effect that this would have on fees for the remaining 50% -- perhaps they would increase due to the smaller licensee base.

We also note that this paper expresses a concern that turning over all regulatory authority for AEA materials to the states could be considered an "Unfunded Mandate," and viewed as subject to the Unfunded Mandate legislation. This is presented as an argument against Option 5. Strangely enough, concern over unfunded mandates didn't enter into the discussion in DSI 4 of the Commission's possible recommendation that OSHA-90 be modified so that NRC could charge Agreement States to recover its "oversight" costs.

So on the one hand, it is argued that states should not be burdened by the unfunded mandate of the NRC's turning its materials program over to them, while on the other hand, Agreement States, which have voluntarily accepted an unfunded mandate, will only be considered co-regulators and equals if they paid part of the expenses of the federal agency whose work they have taken over!

Two strong themes running throughout many of the NRC "Direction Setting Issue" papers are its shrinking licensee base and money. The themes are inexorably linked since NRC is required to recover all operating costs from licensees. As the number of licensees declines, fees rise and this accelerates the decline by causing licensees to give up their licenses or even relocate to Agreement States. This should be seen as a natural process driven by Section 274 of the Atomic Energy Act, which created the Agreement States program. The more successful the Agreement States program is (i.e., the more states that accept responsibility for "Agreement" materials and add them to their radiological health programs), the more marginal NRC's program becomes and the more difficult to support. Since states now regulate 70% of "Agreement" materials licensees, and will soon regulate 80%, it is rapidly becoming impossible for NRC to support its program by fees imposed on such a small number of licensees.

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There are ways in which NRC could reduce its operating costs, such as eliminating its costly and extensive practice of contracting out work that could be done by its own technical staff, and reducing its research and rulemaking activities to those that are truly necessary to protect health and safety.

They could also save substantial amounts by adopting rules already developed by Agreement States (such as Industrial Radiography and Well Logging regulations) and adopting cost-effective practices already used by Agreement States to expedite licensing and inspection activities. Instead, NRC chose to discontinue the training it formerly offered to Agreement States, at a trivial savings of one-half million to one million dollars a year.

However, although such cost containment actions should certainly be undertaken as interim measures, they are not the solution. The solution is for NRC to recognize that what is happening is the desired outcome for the Agreement States program: the successful transfer of regulatory responsibility for Atomic Energy Act Section 274 materials from NRC to the states. Having achieved that goal, there should be no question that Section 274(a)(6) of the Act must now be implemented. That provision states that "as the states improve their capabilities to regulate effectively such materials, additional legislation may be desirable." This legislation would properly be to amend the AEA to withdraw the federal preemption of AEA materials, and restore them to the universe of radiation sources already regulated by the states.

Unfortunately, as in the DSI 4 paper, the Commission's preliminary views are basically to maintain the status quo with some decreased oversight over "low-risk" activities. Aside from the arguments we have already made against what amounts to a "no-action" option, this begs the question of who will pay for NRC's program if they insist on continuing it. There is no question in our minds that the states will not.

In regard to NRC's proposal to decrease oversight of "low-risk" activities we have the following comments:

- While the wording used in regard to defining "low-risk" is vague, we hope (and strongly recommend) that this will involve a risk-based reevaluation of all existing generally licensed and exempted radioactive materials in NRC regulations. The results of such a global reevaluation should be used to redefine and restructure these regulations, not just to move currently defined generally licensed and exempted materials from one category to another.

We strongly recommend that this reevaluation include elimination of the general license given in 10 CFR Part 31, section 31.5, and reallocation of these devices to exempt or specific license status.

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- The proposal to transfer some current specific licenses to general licenses appears to be an attempt at an ill-considered "quick fix" to reduce NRC's workload. We have submitted comments to NRC elsewhere (see attached July 29, 1996 letter from Rita Aldrich to Carl Paperiello) on the problems inherent in "general" licenses which have resulted in accidents requiring millions of dollars to be spent in remediation. Our letter suggested more innovative ways of shifting resources to reduce burdens on both regulatory agencies and regulated parties.

Also, even though this proposal is planned to reduce 50% of NRC's current specific licensees to general license status, with a drastic reduction in oversight of these programs, only 50 NRC staff are expected to be eliminated as a result. We believe strongly that this proposal would result in a significantly increased risk to health, safety and property while producing negligible savings.

- NRC should begin an immediate review of all of its regulations for AEA materials, with the objective of eliminating as many prescriptive requirements as possible. For example, although every licensee needs to implement a radiation protection program, the existing requirement to perform an annual audit of the program, and of the conduct of the radiation safety officer, is reasonable only for larger, more sophisticated programs. However, NRC's guidance for portable gauge licensees (one of the categories it now apparently wants to relegate to general license status) contains a four and a half page form to be used for such audits. This combination of a needless regulatory requirement, made even more onerous through "guidance" is not unusual. Therefore, instead of seeking quick and easy fixes that may degrade the current level of safety, NRC should perform a thoughtful review of its regulations -- Part 35 in particular -- and its guidance documents for the expressed purpose of reducing regulatory burdens on itself and its licensees.

This regulatory reevaluation should be conducted concurrently with the implementation of Option 2 under DSI 4, since simplifying regulations, and making them performance-based and easier to implement, should in itself attract states to Agreement State status. The reevaluation should of course be conducted in close consultation with the Agreement States, as NRC also works on implementation of Option 5.

RA:jmp
10/16/96

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