

DSI-23

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To: WND1.WNP2.SECY
Date: 10/25/96 11:30am
Subject: Strategic Assessment - Issue Paper 23

Attached are my comments on Strategic Assessment Issue: 23. Enhancing Regulatory Excellence. The views are my own and were not submitted to my management for their review.

Strategic Assessment Issue 23 - Enhancing Regulatory Excellence

The Chairman, at the recent all-NRC meeting, encouraged staff comment on this issue paper in particular. From my reading of this paper, the issue and the Commission's objective regarding needs better definition if options acceptable to the Commission are to be proposed.

In its preliminary view, the Commission states this issue as "how the NRC can implement strategies designed to improve its own internal performance, that is, for the NRC to be proactive in making our own people and processes function with a goal of excellence." The paper Summary notes that regulatory excellence involves both "regulatory effectiveness" and "regulatory efficiency" components. It also states, "This issue paper focuses on options primarily to increase regulatory effectiveness as a means of enhancing excellence of the regulatory framework." However, some of the recent initiatives stated as improving "effectiveness", e.g., "remove excess regulatory burden by eliminating requirements that are marginal to safety or duplicative", are more related to efficiency than effectiveness. A clearer separation of measures to improve effectiveness and those to enhance efficiency may be helpful, as well as a clearer understanding of whether the problem to be solved is primarily a question of effectiveness or one of efficiency, or whether both are of equal concern at this time.

Excellence in regulatory effectiveness might be defined as accomplishing the regulatory mission of ensuring that licensees protect the public health and safety; however, that may not be sufficient if the public is not aware of that performance, and perceives a higher risk than may exist. Thus regulatory effectiveness should perhaps be measured in terms both of excellence in the licensees safety performance and of the public's perception of that performance. Continuation of our policy of "arms length" relationship with licensees should help with that perception, and perhaps additional training of staff with regard to that policy would be helpful. "A regulatory framework that is clear, coherent, logical, consistent, reliable, and technically sound" also should help with public perception, but is not of itself sufficient. Despite the need for an arms length relationship with industry, we have been encouraged by the Commission to have, at earlier stages in the rulemaking process than called for by the Administrative Procedures Act, a more active dialogue with interested parties. Additional policy guidance could be beneficial regarding how proactive the staff needs to be in soliciting non-industry participation in these dialogues and procedures reviewed to ensure the maintenance of the arms length relationship. Such procedures aimed at an element of improved effectiveness may at times be more resource intensive (i.e., less efficient) than sitting around a table with industry and hammering out a consensus rule.

We already have an organization, OIG (omitted from Appendix A is any mention of its predecessor organization, the former Office of Investigation and Audit, leaving the mistaken impression that there were no internal audit of NRC prior to 1989), charged with auditing the agency performance. We also already have procedures, including requirements for rulemaking plans, regulatory analyses, and the backfit rule, and the procedural steps and public notice and comment of the Administrative Procedures Act, and submissions to Congress under the Small Business Regulatory Fairness Act, which

should ensure that new regulations are clear, coherent, logical, consistent, reliable, and technically sound. It is not clear how another "agency-wide senior management review group" will make a difference in regulatory effectiveness.

A better approach to the portion of regulatory excellence involving ensuring excellence in the licensees safety performance, might be to use more of our resources for reviews of licensee safety performance. Less than excellent licensee safety performance would indicate that the NRC staff is not doing an excellent job of ensuring safety. Reviews are different than inspections and not adequately described in Issue Paper 23 Appendix A. They are not limited to audits of compliance and sometimes involve no penalty to licensees, in an attempt to get them to be more candid with the reviewers and less defensive than they often are with inspectors. They include looking for items of less than excellent safety performance that may not be adequately addressed by our regulations and inspection procedures, and that could be indicative of deficiencies in the NRC's regulatory base. They can also be used to recommend areas where the regulations could be changed to eliminate regulatory burden without reduction in safety, but that need not be their primary purpose.