

New York State Department of Environmental Conservation
Division of Solid & Hazardous Materials
Bureau of Pesticides & Radiation
50 Wolf Road, Albany, New York 12233-7255
518-457-2225 FAX 518-485-8390

DSI-12

(51)



Michael D. Zagata
Commissioner

Mr. John C. Hoyle
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

DEC 12 1996



Attn: Chief of Docketing and Services Branch

Dear Mr. Hoyle:

This responds to the Nuclear Regulatory Commission's September 13, 1996 request for comments on its Strategic Assessment of Regulatory Activities. We offer the following comments for the NRC's consideration.

Direction Setting Issue (DSI) 2: Oversight of the US DOE by the NRC

Funding

NRC should not choose the first funding mechanism described in Section D to fund any oversight of the DOE. The first mechanism described is distributing the costs among the broadest base of NRC licensees. This would force commercial generators and licensees in non-Agreement States to pay for one federal program's regulation of another federal program. The NRC estimate for the cost of full program as envisioned by the Advisory Committee is \$150 to \$200 million annually. The other two mechanisms, amending the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) or rescinding both OBRA-90 and the independent Offices Appropriations Act of 1952, should be pursued first.

Suboption 1A: Support for the Adoption of the Advisory Committee Recommendations

This suboption does not discuss any Agreement State oversight of any DOE operations. This implies that the NRC would regulate all DOE operations in the Agreement States, even though the authority to regulate nearly identical operations (including waste treatment and processing, low-level waste disposal, low-level waste storage, accelerators, environmental restoration, decommissioning - waste processing, decommissioning- research and development facilities, and sealed sources) at non-DOE sites is held by the Agreement States. This suboption should specifically exclude the Agreement States, if that is the intent, or describe Agreement State oversight of DOE operations.

Of note is the Advisory Committee's recommendation that, "States with programs authorized by EPA, OSHA, or the regulator of facility safety acquire or continue to have roles in regulation of environmental protection, facility safety, and worker protection

comparable to those they now exercise in the private sector." The Agreement State program should be viewed as an authorized program, and therefore included in this recommendation.

Suboption 1B: Use the Division of Responsibility that Applies to Commercial Facilities

This suboption allows NARM wastes to be regulated by the EPA and the States, since the NRC does not generally exercise jurisdiction over NARM. NRC staff then notes that EPA does not actively regulate NARM, and that State regulation is uneven. Thus, this action would make numerous DOE facilities subject to uneven or nonexistent regulations, depending on which state the facility is located in. This action would make the issuance of DOE-wide procedures for the handling of NARM wastes cumbersome at best.

Suboption 1C: Minimize Jurisdictional Conflicts Between NRC and Other Agencies

This suboption increases the EPA's role considerably, while reducing the NRC's involvement. NARM is left to the EPA and the States, as discussed under suboption 1B. The EPA regulates the decontamination and decommissioning of DOE facilities, and would implement their environmental standards at DOE facilities (currently performed by the NRC). The mechanism provided for resolving the overlapping NRC/EPA responsibility for the DOE's mixed waste would likely result in a more confusing situation than what currently exists. Since this option would require a change in regulatory authority anyway, one agency should be given sole responsibility for all mixed wastes, instead of just further defining the division of responsibility.

Suboption 2A: Regulate Only the Non-Defense Nuclear Facility Complex

Although not specifically addressed, a restructured Defense Nuclear Facilities Safety Board (DNFSB) could regulate DOE weapons facilities. This separation of regulation between the NRC and the DNFSB could still be consistent with the Advisory Committee's findings, and should be further explored in this suboption.

Suboption 2B: Regulate only DOE facilities that are similar to those presently regulated by NRC

The discussion of this suboption fails to define who would regulate those facilities dissimilar from the ones NRC currently regulates. It even states that it could exclude regulation of components manufacturing and accelerators. This is not in agreement with the Advisory Committee's recommendation that, "An existing agency regulate facility safety at all DOE nuclear facilities under the Atomic Energy Act."

DSI 9: Decommissioning - Non-Reactor Facilities

The NRC can usefully modify its approach to require a performance based dose limit, without specifying the details. This limit would be applicable to plausible land use scenarios; including only those pathways that are reasonable for the given site. The role of the NRC should not be overly prescriptive about the details of how the limit is met, rather help decide on the limit, provide enough review so that the proposed plan has a likely chance of success, and finally, to insure that the limit has been achieved. Hopefully, this approach will help reduce the time needed to complete decommissioning work when contamination of soil or water has occurred.

DSI 12: Risk-Informed, Performance-Based Regulation

The word "risk" has two uses in this section. It refers to the likelihood of device failure with presumably some foreseeable consequences, and it also refers to potential health effects. There is usually some data from which to derive an estimate of device failure, but there remains a major problem in assigning an estimate of the potential health consequence based on any dose-effect measurements. It is, after all, potential health effects that make necessary all the rest of the concern. Rather than continue to rely on unsupportable assumptions about the health effects of low levels of ionizing radiation, the NRC in cooperation with EPA and DOE, could expand the basic research effort to better address the fundamental issue of health consequences. We would encourage the NRC to maintain an aggressive research effort as suggested in DSI 22.

Thank you for the opportunity to comment on this document. Please contact me if you have any questions.

Sincerely,



Paul J. Merges, Ph.D., Chief
Bureau of Pesticides & Radiation
Division of Solid & Hazardous
Materials

cc: R. Aldrich, NYSDOL
G. Miskin, NYCDOH
K. Rimawi, NYSDOH
J. Spath, NYSERDA