



NRC STRATEGIC ASSESSMENT AND REBASELINING INITIATIVE

DIRECTION SETTING ISSUE COMMENT FORM

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AFFILIATION Organization of Agreement States

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
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- ☐ General

COMMENT:

See Attachment. These will be presented orally.



Organization of Agreement States

Comments on

U.S. NRC Strategic Assessment and Rebaselining Initiative

Direction Setting Issue Paper # 4

"NRC's Relationship with Agreement States"

Summary

What should be NRC's strategy regarding States becoming and remaining Agreement States?

The Agreement States should be treated as partners/co-regulators in the effort to protect the health and safety from radiation in the United States. The statute which created the Agreement State program recognized the growth of the states and their eventual assumption of a "co-regulator" status. The majority of the states are now Agreement States and are fully capable of participating with the NRC in determining the shape of the program.

Only Option 4 states that "the Commission would recognize the experience that lies within the Agreement States." This recognition should occur within the NRC regardless of the chosen strategy option. The NRC's assertion under Option 4 that as part of this recognition, Agreement States should be self-sustaining, and should require minimal support (in the form of subsidized training) amounts to saying that the Agreement States must pay the NRC to recognize the contributions made by the Agreement States that support the NRC and its licensees. The contributions are identified in the Specific Comments section below.

Option 4 has taken the spirit of cooperation between Agreement States and the NRC and reduced it to a destructive game of "tit-for-tat." NRC's ideas presented in Option 4 are in direct contrast to the views recommended in other DSIs where cooperation with professional societies, international agencies and licensees is stressed.

The term "co-regulators" as described under Option 4 appears inconsistent with the State's views of the NRC/Agreement State relationship. We propose that the NRC transform its traditional view of the NRC/Agreement State relationship into "strategic partnering." The relationship is less "donor" helping "recipient." The relationship would be more equal and cooperative. This idea is taken directly from the last paragraph on Page 13 of DSI 20--International Activities. If the NRC is willing to foster such healthy relationships overseas, it should also want to foster equally healthy relationships with regulatory

agencies in the United States.

An evaluation of the health and safety impacts for each option should be included as these impacts are the primary reason for the NRC's existence.

With the above in mind, the Agreement States favor continuation of certain programs developed in partnership with the Agreement States and presented in Option 3, especially the Adequacy and Compatibility Policy Statement and IMPEP. This is the Commission's preliminary decision. In addition, we recommend the NRC recognize the many benefits received by the NRC and its licensees from the states and return to funding of training, travel and technical assistance; use intangible incentives to encourage more states to become Agreement States; recognize the fact that the Agreement States are regulatory "partners" with the NRC; and seek appropriations for the functions involving Agreement States, with assistance in the form of testimony before congressional committees provided by Agreement States.

Specific Comments

The many benefits the NRC and its licensees receive from the Agreement States, without reimbursement, were conspicuously missing from this DSI, resulting in an inaccurate representation of the benefit/cost situation. In September 1996, the Organization of Agreement States passed a resolution pertaining to training and funding that summarizes the services and benefits provided to the NRC and its licensees by the Agreement States. The benefits include:

- A. The Agreement States regulate all commercial LLRW disposal facilities and are in the process of licensing all the new commercial LLRW disposal sites. Although the NRC charges a supplemental fee for waste disposal and these fee revenues are not provided to the Agreement States, LLRW facilities in Agreement States continue to receive waste from the NRC licensees as well as Agreement State licensees.
- B. The Agreement States respond to incidents involving transportation of NRC licensed material within their jurisdictions, particularly those involving interstate carriers.
- C. Many Agreement States provide salaries for their staff participating in the NRC IMPEP reviews of Agreement States and NRC Regional Offices.
- D. The NRC has requested and received Agreement State staff lecturers at NRC sponsored training courses without payment of salary for the Agreement State staff time.

- E. Agreement States develop many rules that benefit the NRC, such as well logging and industrial radiographer certification, without compensation from the NRC.
- F. The Agreement States have conducted surveys and assisted in the removal of byproduct material from facilities at the request of the NRC; and
- G. The Agreement States are currently investigating potentially contaminated sites for licenses that the NRC possibly terminated inappropriately.
- H. The states monitor the environs of nuclear power plants and other nuclear fuel facilities licensed by the NRC in order to confirm the validity of the NRC licensees' environmental monitoring programs and to confirm that releases of radioactive material to the environment are in compliance with effluent limits, with only partial compensation.

In addition, other considerations that have been omitted from this DSJ, are detailed below:

- A. The NRC states that it requires a minimum of 500 - 1,000 licensees to have a viable NRC program. Most Agreement States have less than 500 licensees and would remain viable programs even if NRC's byproduct material program ceased altogether.
- B. The NRC would do the same amount of work on regulations if there were no Agreement States or if there were 49.
- C. An evaluation of the health and safety impacts for each option should be included as these impacts are the primary reason for the NRC's existence.

There is no evidence that so called "tangible incentives" or seed money without continued support from the NRC would result in any new Agreement States. Funds would be better spent on training, travel and technical assistance to existing Agreement States. While the Commission wants to encourage more States to become Agreement States through intangible incentives, charging them for assistance is a tangible disincentive. Continued funding would send a message that the NRC recognizes that the NRC and its licensees benefit from new states becoming Agreement States and the overall costs of such regulation on a national basis will be lowered with additional Agreement States.

The NRC should look more closely at program areas such as its LLW research, detailed data collection and analysis of operational data and events, and support of international students for spending cuts which would not likely result in a reduced level of safety for the public and workers.

Option 1--Turn the Agreement States Program Over to the Environmental Protection Agency

There are major disadvantages to this option. Why would the EPA want to accept an unfunded federal mandate from the NRC? The expectation from states for a new EPA program would be that grant monies are available. The EPA currently provides free training and performs semi-annual reviews for its existing programs. Overall, there would be no costs savings to the federal government, but increased cost for the transition. Considering the current federal government downsizing initiative, it is highly unlikely that Congress would fund a new program. EPA regulation of former NRC licensees would be difficult because EPA regulation is usually very prescriptive and not performance based. Licensees, many who hold EPA permits in various media, may not be in favor of a transfer of such authority. Option 1 should not be considered seriously. It would be more appropriate for the EPA to turn over its environmental radiation regulatory program to the NRC.

Option 2--Strongly Encourage States to Become Agreement States

This option is unlikely because new federal monies are, have been, and will continue to be unavailable under the current federal government downsizing initiatives. Also, the NRC has been discouraging state participation by recent policy decisions of eliminating training, travel and technical assistance monies. Some Agreement States' experience with trying to negotiate reimbursable or free services with the NRC has not been positive. For example, rather than seriously considering the proposal, the NRC cited difficulties in resolving details of a Memorandum of Agreement (MOA) to rebuff attempts to provide an inspection arrangement for the uranium/thorium disposal unit and uranium mill facilities already being inspected by a state for other purposes. While the Agreement States support the concept of all states becoming Agreement States, the states are opposed to the proposal presented as Option 2.

Option 3--Continue the Current Agreement States Program, including Adopting Current Initiatives

The Agreement States favor continuation of certain programs developed in partnership with the Agreement States and presented in Option 3, especially the Adequacy and Compatibility Policy Statement and IMPEP. This is the Commission's preliminary decision. In addition, we recommend the NRC recognize the many benefits received by the NRC and its licensees from the states and return to funding of training, travel and technical assistance; use intangible incentives to encourage more states to become Agreement States; recognize the fact that the Agreement States are regulatory "partners" with the NRC; and seek appropriations for the functions involving Agreement States, with

assistance in efforts before congressional committees provided by Agreement States.

As a sign of its changed view, the Commission should immediately modify its policy and seek Agreement States' concurrence on all rules, practices, and procedures which will become part of the program to which the Agreement States will be expected to be compatible.

Option 4--Treat Agreement States as Co-Regulators

The NRC has misinterpreted the term "co-regulator" and the states will not support this option until the term "co-regulator" represents the shared vision of the NRC and the states. The NRC's view of "co-regulator" should be that the Agreement States and the NRC have the same health and safety goals. The Agreement States and the NRC should approach the co-regulator issue on the basis of shared resources. States already accomplish many tasks for the NRC and its licensees and are not reimbursed for such services. The NRC has never taken these services into account. The NRC should not charge states for technical assistance or training as long as it is more effective to have the Agreement States conduct a regulatory program within their borders. The NRC should seek appropriations to support functions of the Agreement State program. If the NRC paid the Agreement States for services rendered to the NRC or its licensees and if the NRC recouped all those expenses by fees charged to its licensees, then the NRC licensees would still pay these costs.

Option 5--Devolve Regulation of Atomic Energy Act Section 274 Materials to the States

The NRC and the states through the CRCPD should begin working on a long term (ten years) goal of implementing Option 5. In addition, the NRC should never consider walking away from regulating licensees in a state where there is no Agreement State program.