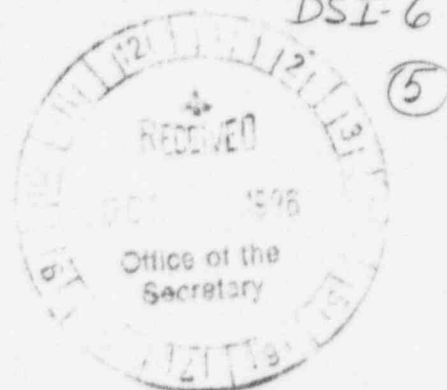


**From:** Frazee, Terry <tcf0303@hub.doh.wa.gov>  
**To:** WND1.WNP2(secy)  
**Date:** 10/28/96 1:11pm  
**Subject:** Strategic Assessment -- Decision Setting Issues



TO: Secretary of the Commission; USNRC

The state of Washington appreciates the opportunity to comment on the NRC's strategic assessment of its regulatory activities. Our early comments on certain of the Decision Setting Issues (DSI) papers are noted as follows:

#### DSI #2 -- Oversight of the Department of Energy

We support Option 1 -- DOE needs external regulation. NRC is the only federal agency in a position to effectively do so. No activity of DOE should be without external regulatory oversight as a matter of principle.

A phase in of regulatory oversight by NRC should be considered if necessary. We oppose Options 2 - 4.

Accelerator produced material and NORM should be included in external regulatory oversight as well. This may be a role for the states if NRC continues to resist asking for this authority. OSHA should not be involved in radiation safety issues, just the "normal" industrial safety issues.

Fees should be by appropriation or direct fee to DOE (both need Congressional action) but other NRC licensees should NOT be required to support this activity.

The Commission should wake up...over the long haul you are losing materials licensees to Agreement States and there have been no new reactors under consideration for years! You have a "dying program" on your hands and should be looking for new business! Certainly a phase in of DOE oversight over a number of years could be an important factor in NRC maintaining a viable work force for overall radiation protection in this country. You talk about having a "national program" but your actions aren't convincing.

#### Specific Comments:

1. This DSI should have discussed in more detail why self-regulation at DOE has failed. At least this report compares historical high standards under NRC's rules to DOE's less than high historical standards for self regulation. This description clearly illustrates the past problem with self regulation and why NRC standards should be adopted. Any compromise of standards must not involve the compromise of worker and public safety standards.

2. The discussion of production reactors leaves an impression that some are

operational at Hanford. They are not.

3. The discussion of types of facilities beginning on page 5 does not include transuranic waste. The number of low-level waste disposal facilities does not differentiate between operational and retired, but existing sites. The high-level waste facility description is also not clear. How are the "25 DOE high-level waste/spent fuel facilities" defined; by groupings, or by individual unit. At Hanford there are currently two separate basins where spent fuel is stored, and 177 high-level waste tanks divided into 18 tank farms, not counting associated small facilities for transferring wastes. How many of those are "facilities" under the definition used in this report?

4. The Waste Isolation Pilot Plant is designed to hold transuranic waste.

5. Under B. DOE self regulation, it describes the Order system in DOE, adding that it will be replaced by the 10 CFR 800 series. That is already well under way, with several already completed.

6. The option of using the DNFSB as a regulatory agency is not recommended. Existing regulatory structures should be used, not the creation of another regulatory body.

7. As a participant in the meetings on DOE external regulation, we do not recall that decontamination would be excluded from the facility regulator's purview (page 15). It should not be excluded.

8. On page 11, it says that NRC would have to resolve the issues often associated with regulating another federal agency. EPA has already worked that out, as it regulates DOE under the Clean Air Act and various other environmental laws.

9. This DSI lays out a few possibilities for regulating DOE, without using the option of combining the benefits of parts of several options. One option is to accept the Advisory Committee recommendations, without suggesting that all the recommendations do not necessarily have to be adopted. They were only recommendations.

10. In several states, heavy involvement with DOE sites is already under way, with state regulators more familiar with the sites than the NRC, due to our closer proximity and current involvement. That relationship should be utilized and taken advantage of. That is best accomplished under option 1b.

11. Since this subject involves radiation safety, any congressional action should specifically address CERCLA's (Superfund) pre-emption of licensing under other laws. That pre-emption does not benefit worker or public safety due to radiation exposure. It also conflicts with other federal laws.

#### DSI #4 -- NRC's Relationship with Agreement States

We support Option #3 with modifications. We believe there is a need and desire on the part of the states to have a consistent, uniform national program to provide leadership and guidance in protecting the public from radiation hazards. At the same time, the statute which gives NRC that leadership position 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 fully capable of participating with NRC in determining the shape of the "national" program. The Agreement States should have an equal vote in determining which rules, practices and procedures are applied nationally.

It should be fairly clear that not all states will become Agreement States and NRC will always have at least a modest number of licensees to regulate beyond those licenses issued to federal facilities. NRC will continue to have a need for its own rule-making function even if all the licenses in the Agreement States ceased to exist. Therefore the argument is that NRC should continue to fund that function. In fact, NRC should seek an appropriation to fund that function rather than burden its licensees (or the Agreement States). This should be viewed in the context of NRC as the statutorily appointed leader of the national program. Any "national" program should be funded by Congress. That funding should necessarily include the cost of training, travel and technical assistance to assure that all states and the NRC staff are consistent in applying the national program standards. It should be recognized that the Agreement State contribution to the national program comes in a number of ways that involves significant expenditures of state resources such as their staff's participation in responding to interstate incidents; providing expertise on rule-making topics; and shared activities such as IMPEP and special workgroups. These expenditures are no more nor less the responsibility of the state's licensees than NRC considers its licensees to be responsible for Agreement State training, technical assistance, and "extra" rule-making efforts. In fact, all licensees should have a collective, vested interest in the overall success of the radiation protection community in view of the power of public opinion in influencing Congress.

#### Specific Comments:

Option #1: Turn AS program over to EPA: OPPOSE. While it should be the aim of the states to seek a central federal oversight agency for all sources of radiation, it is clear that NRC has significantly greater technical expertise in the area of radioactive materials and protecting the health and safety of the public. It would be more appropriate for EPA to turn over its environmental radiation regulatory program to NRC than vice versa.

Option #2: Strongly encourage new AS: Support in concept -- Opposed in practice. Funding of Agreement State training and technical assistance is important for assuring a consistent national program but providing "seed money" may simply prop up an initially weak program which could fail to protect the public when the "seed money"

disappears. This option is based on the inherently weak notion that all states would eventually become Agreement States. Several are already known to have rejected this possibility.

Option #3: Continue current AS program: SUPPORT but modify to provide full funding of training and technical assistance to assure consistency in the application of the national program; modify Commission policy to allow Agreement States to vote on all rules, practices, and procedures which will become part of the national program to which they must adhere (and refrain from Commission over-rides of votes that are not to their liking!)

Option #4: Treat AS as Co-Regulators: Support concept -- Opposed in practice. As discussed above, the NRC should treat Agreement States as co-regulators. This option, while ostensibly striving toward that goal, appears to be nothing more than an attempt to require Agreement States to pay for support that was promised by the AEA in recognition of the value brought to the national program by the capabilities and activities of the Agreement States.

Option #5: Devolve AEA Section 274 to States: OPPOSED. This would weaken any semblance of a national program and lead eventually to non-uniformity and potential conflicts between the various state radiation programs (even assuming that all states would have such programs which is currently not the case for non-AEA material). This option does not protect the public health and safety in the long run.

#### DSI #5 -- Low-Level Waste

Options 1, 4, 5, and 6 should be eliminated. Option 2 is the most desirable single alternative, but the staffing level should not be returned to what it was prior to program cuts, since the need for services is less. A combination of options 2 and 3 is actually preferred over any single alternative. If Option 2 should be chosen, and if staffing levels revert to what they were prior to the cuts, perhaps the additional staff could look at the handling, processing, and recycling of LLRW. Staff could participate in the development of volume reduction technology and better waste forms.

Public comments received from Agreement States in response to SECY 95-201 (as stated at the bottom of page 20) were heavily weighted toward Options 3 and 4. It should be noted that the NRC provides a valuable service within the industry. Do the non-sited Agreement States really know the LLW issues (e.g., performance assessment, waste form, waste classification calculations, etc.) that well, and do they have the qualified staff to be able to say that they basically do NOT need the NRC any longer? If other states do have this capability, they will not have it for long (as their budgets get tighter).

Specific Comments:



Option 1--The NRC should take a leadership role at sites nearing completion. However, since the LLRWPA Act objectives have basically been met, they should not dedicate a lot of effort in this area. The NRC should not pursue disposal at U.S. DOE facilities because such efforts may interrupt the progress that has been made in development of disposal facilities.

Option 2--Firm national leadership is necessary in areas that the NRC professes an expertise, such as DOI's concerns at Ward Valley, and to ensure national uniformity of disposal practices. As stated on page 14 of the DSI, the ACNW recommended that the NRC maintain a presence that would contribute to a "consistent, coherent, and adequate national LLW regulatory program." From the outside vantage point there seems to be some federal-state antagonism that the NRC may be able to alleviate at the federal level. Additionally, national standards (e.g., waste forms and packaging) need to be maintained as new states/compacts develop new sites, to ensure adequate public safety and protection. Existing sites have mature programs, but new sites will probably have a general lack of expertise and experience and could inadvertently generate policies that are not conservative.

Option 3-- National program activities that are beyond the abilities (manpower and money) of the states/compacts need to be maintained. Examples include review of topical reports when required, waste form guidance in BTP's, performance assessment guidance specific to common waste forms (e.g., solidified liquids, dewater resins, chelates), concrete survival in the disposal environment, and package degradation curves at disposal sites. Further review of topical reports may not be needed (a lot already exist that are not utilized at our site) unless a breakthrough in technology creates a new super stable waste form. The NRC could act as a national clearinghouse/coordinator for problems (e.g., new waste forms, DOT questions) within the LLW community.

Option 4--Past site development strategy did not work and additional resources should not be expended in this area (other than CA/DOI dispute). The DSI stated on page 11 (under III.A) that the primary focus of the national program was the development of new disposal capacity. We don't believe that the NRC had any input into Barnwell staying open; and in either case, Barnwell is not new capacity. Nebraska and Texas are still working toward opening, but will probably have several years in court. In the future the NRC should refocus its efforts on technical issues by prioritizing the workload using current FTE levels (e.g., sharing FTE's with other programs as is done at our level).

Option 5--Under NO circumstances should OPTION #5 (transfer to EPA) be even considered. It would take years and more FTE's than the NRC would save to bring the EPA up to the level that the NRC is at currently. And will the EPA maintain the current set of regulations? NRC ASSUMES this will be the case. Who knows what Congress will legislate if the LLRWPA is reopened. It could be very disruptive to individual state

programs and current and future disposal sites.

Option 6--Long-term storage is not the answer; burial is ultimately the best solution. Long-term storage would only delay the need for disposal, and would probably face even greater public opposition as a "delay tactic." In order to proceed with this option, new guidance and criteria would have to be developed, and public acceptance could be a greater issue than at present. Before proceeding with this option, a detailed evaluation of the federal government's efforts to store high-level waste (MRS) should be conducted.

#### DSI #6 -- High-Level Waste and Spent Fuel

Something must be done soon to address the storage of spent fuel in the near term, before the repository opens. Option 5 offers the clearest option for this to occur. Interim storage of fuel should be a preferred option. Options that short circuit the characterization process should not be accepted.

The repository itself has become very politicized. Whatever is done with the fuel and high level waste, it must be safe. Full licensing of the repository is preferred. No shortcuts should be allowed. If Yucca Mountain proves to be unsuitable, it should not be used. If that occurs, a fallback (e.g., interim dry-cask storage) should already be in place to avoid a crisis. In the event that Yucca Mountain is unsuitable, other long term options should be in place.

The most cost effective option is to allow dry storage at this point. The Commission should encourage Congress to move towards dry storage AND using DOE facilities as an MRS. DOE owes the utilities something for all the waste of time and their money on this issue and should be part of the interim solution. Look at how long WIPP is taking to get started. At DOE's current pace determining a repository site will outlast the lifetime of all our reactors!

#### DSI #7 -- Materials/Medical Oversight

We support a combination of Options #1 and #3: ALL uses of radiation regardless of source (Option #1) should be regulated according to their relative risk of harm to humans (Option #3). We should have a consistent, uniform, national program for the regulation of ionizing radiation which necessarily includes NORM, NARM, and x-ray as well as by-product material. It makes little sense to continue dividing the issue of radiation safety according to archaic historical distinctions.

Whether the issue is "misadministration", generic machine defects, computer programming errors, or radioactivity in the environment, the regulatory requirements should be based on the health risk and apply equally to any source of radiation: NORM, NARM, by-product material, or machine produced radiation.

There should be a decrease in the oversight of "low-risk" activities while refining and emphasizing control over "high-risk" activities. However, this does not mean that "low-risk" activities can be automatically dropped to the current, poorly regulated "general license" status. The appropriate level of regulatory oversight should be determined in concert with the Agreement States and the CRCPD.

Option 2 is not supportable since it infers that the current degree of oversight requires "only a little" modification. The fractiousness among all parties over the Quality Management Program alone makes it unlikely that "improvements to increase efficiency" will be satisfactory. "Revision of regulations to make them more risk-informed and performance-based rather than prescriptive" is much more appropriate but should be done in the context of Option 3 which takes a broader look at all regulated activities of NRC.

Options 4 and 5 are not supportable because they represent a particular abrogation of federal responsibility which would lead to increasing fragmentation and disparity among isolated state radiation control programs across the nation. This would not provide consistent, uniform radiation protection for citizens as they move from one jurisdiction to another.

#### DSI #9 -- Decommissioning - Non-Reactor Facilities

WA supports a combination of Options to improve the current decommissioning process: We believe it is appropriate for NRC to allow more realistic dose assessment scenarios, including allowing up to 500 mrem/yr. hypothetical intruder doses (Option 3); adopting an EPA-like approach allowing greater residual contamination in some circumstances but requiring active maintenance and monitoring (Option 4); focusing on sites where decommissioning progress can be made and transferring the stalled sites to EPA (Option 6); and allowing uranium mill tailings impoundments to be used for disposal of similarly contaminated wastes (U, Th, Ra) originating from non-uranium mill sources (Option 7).

#### Additional Comments:

Option 1: "Status quo" -- Oppose. Currently takes too long and is seemingly ineffective in resolving certain cases.

Option 2: "Change review process" -- Allows too much latitude for licensees to proceed down the "wrong road" and waste considerable resources before regulatory agency steps in to approve adequate procedures. If this option is utilized, recommend modifying the approach to account for those licensees with demonstrable expertise in remediation (or funds to hire outside expertise). As NRC staff are still involved in the final survey, public health would still be assured prior to licensee termination.

Licensees with insufficient capital or experience would still be required to submit decommissioning plans for review. The discussion of sufficient funds is important only to the extent that a licensee can re-address those areas where insufficient remediation has occurred.

Option 3: "Change Criteria and Scenarios" -- SUPPORT This option is taken as a revision to the framework for 10 CFR Part 61. Modifications to the intruder scenario to allow for the probability of intrusion and site degradation would provide flexibility through increased accuracy (realism).

Option 4: "Adopt EPA approach" -- Although there are some fundamental differences between NRC and EPA disposal requirements, the two methods are not as far apart as stated. Although the NRC analysis for low level waste facilities assumes little active maintenance or controls (as EPA would), in practice, measures similar to hazardous waste facilities are required by NRC to limit the release of radioactive wastes, such as stipulations on the type of cover and maintenance, etc.

Option 5: "Dump Source Material on EPA and states" -- requires legislative change and goes the "wrong way"! Consolidation of radiation issues is a good idea but the Agreement States generally view NRC as the more appropriate agency to accumulate all radioactive materials control! Legislation should be brought forward that transfers NORM and NARM issues to NRC as the central "radiation agency".

Option 6: "Transfer Stalled Sites to EPA" -- Taking advantage of EPA's superfund authority is a reasonable way to move on sites where a licensee is not able to take appropriate action.

Option 7: "Take aggressive position for lower cost disposal options" -- Support. After all, DMC still has a hole to fill!

Option 8: "Strong litigation strategy" -- There is already too much litigation going on. Focus on providing reasonable options for licensees to act responsibly rather than just back them into a corner!

Option 9: "Seek Superfund Authority" -- Not necessary if "stalled sites" can be transferred to EPA! Focus on working with licensees, allowing more realistic criteria and disposal choices. "Superfund" action should always be the course of last resort!

#### DSI #12 -- Risk-Informed, Performance-based Regulation

We support Option #3: Consider Risk-Informed, Performance-Based Approaches Primarily in Response to Stakeholder Initiatives By allowing industry and stakeholders to drive the application of probabilistic risk analysis, the NRC may save staff time by only applying resources to those areas identified as significant.



The potential downside of "ramping up to speed" on emerging safety issues could be minimized by collectively agreeing on a 3 to 5 year plan of areas for emphasis. Review of this plan could occur periodically to allow for continued industry and stakeholder input.

#### DSI #14 -- Public Communications Initiatives

We support Option #3 (placing priority on expanding general public outreach) Health physics (especially in the nuclear power arena) blew itself out of the water by remaining "scientists/technocrats" only, being aloof and ignoring the public and their need for education. In their ignorance the public turned on the "friendly atom" and has been anti-nuke with a vengeance. Government in general has also failed to keep the public informed and government regulators in particular are not well respected by the public because they don't understand what and why we do what we do.

Therefore, NRC needs to get out there and be proactive in the "education" arena. NRC cannot leave it to the Health Physics Society's public outreach or the few industry attempts at the same. Outreach needs to be directed in traditional arenas such as schools, community meetings and legislative hearings as well as the "newer electronic methods" and the more "grass roots" approaches.

#### DSI #20 -- International Activities

NRC is losing licensees to the Agreement States and the reactor program is in decline. NRC, like any smart business that is losing its client base, needs to get out there and drum up business! While we are not particularly wild about spending our tax dollars on international work, we also don't want the rest of the world's nuclear problems to get so bad they become ours! Therefore, NRC should be proactive in finding ways to get Congress to fund your involvement in crucial countries overseas and also work toward finding countries willing to pay for NRC expertise!

#### DSI #21-- Fees

We support Option 2. If NRC is mandated to do something, it should be done without the negative influence of fees. NRC should seek to have Congress provide an authorization for any additional activities not covered by the fees currently generated. Congress should also provide a "fee" for the federal agencies that are currently fee exempt OR remove the exemption and allow NRC to set and collect appropriate fees. Funding mechanism 1 should continue to be sought (fees plus general funds for "public" duties)

## DSI #23 -- Enhancing Regulatory Excellence

We support Option 1 (continue current approach of periodic assessments). The problem is "too much, too fast". While taking a "more proactive approach to improvement" (Option 2) is definitely a worthwhile endeavor (and the Commission's preliminary view is to support an even broader perspective than called for in Option 2), it comes in the midst of numerous other changes which will result from Strategic Assessment and Rebaselining! The Commission should watch the changes being made as a result of the other DSI's and gauge the impact on the Agency and the Agency mission. Assessment of these changes and any refining of the new methods and policies should be done first while the circumstances can be (more) clearly identified as to cause. If everything is in turmoil at once, it is harder to identify root problems in the confusion and, therefore, corrective action is longer in coming and potentially off-target. The more proactive assessment of other areas suggested in Option 2 should be phased in over a longer period of time so that changes that result from Rebaselining have a chance of stabilizing and impacts resulting from the "more proactive approach" can be distinguished easily.

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