

DSI-2

(15)



From: Barry Mendelsohn
To: WND1.WNP2.SECY
Date: 11/21/96 5:32pm
Subject: Strategic Assessment - Issue Paper 2

As we continue to be encouraged to provide comments, attached are my comments on Strategic Assessment Issue 2: Oversight of the Department of Energy. The views are my own and were not submitted to my management for their review.

9611270035 961121
PDR NRCSA I
2 PDR

DSI-2

Comments on Strategic Assessment Issue 2
Oversight of the Department of Energy

1. A consideration that has been omitted from the issue paper is NRC's use of DOE's national laboratories for much of its regulatory support. If NRC were to regulate DOE *per se*, conflict of interest concerns would arise that possibly could have a significant impact on how the NRC gets its technical assistance and research accomplished.
2. I would have liked to see more discussion in the issue paper of what the NRC regulatory oversight would be expected to accomplish. According to Section III of this issue paper, DOE's "Advisory Committee on External Regulation of DOE" argued that external regulation would enable the public, States, and tribes to become effectively involved in the regulation of safety at DOE facilities. However, DOE's shift to regulations under the Administrative Procedures Act instead of relying on its system of Orders would also accomplish that. They also argue that an external regulator, free of the responsibilities for DOE's mission, can ensure that safety receives consistent and adequate attention. However, for those facilities in which DOE's mission is now solely environmental cleanup, the conflict between mission and safety is not so evident. NRC's position on the scope of its authority for regulating DOE facilities could be affected by consideration of what it is that NRC would be doing differently from what DOE has been attempting of late.
3. The Commission's preliminary views, favoring Option 4 (Take No Position on Accepting Broad responsibility for DOE Facilities), seem appropriate but I would suggest a slight modification. While the Commission may wish to neither encourage nor oppose legislation giving it broader authority over DOE nuclear facilities, it would seem appropriate for the Commission to offer its opinions on the regulatory authority that it would find most appropriate for the NRC to handle successfully. That is, without advocating external regulation of DOE, the NRC should try to advise on which options it would be best suited to implement should it be given that authority.
4. In its discussion of Suboption 1C (Minimize Jurisdictional Conflicts Between NRC and Other Agencies), the Strategic Assessment and Rebaselining Steering Committee has suggested legislative changes that appear to have merit if made applicable to our existing regulatory responsibility, irrespective of decisions on external regulation of DOE facilities. Perhaps the Commission should pursue these as legislative initiatives independent of DOE oversight. These include:
 - a. EPA would regulate decontamination for unrestricted use and decommissioning of all sites, including decommissioning financial assurance, because the final goal of these activities is to ensure that the environment is properly protected. This should minimize regulatory overlap between NRC and EPA.
 - b. NARM could remain the responsibility of EPA and the States, consistent

with present commercial practice and the first alternative under this option, or it could become the responsibility of NRC. In either case, the agency or agencies responsible for NARM would need to take an active role in its regulation to ensure that a class of orphan wastes is not created and that NARM and AEA wastes are treated consistently.

- c. EPA would establish and implement environmental standards for facilities. This feature would remove NRC from implementation of EPA environmental standards. It potentially avoids the conflicts EPA and NRC now face in commercial regulation that arise from differing agency objectives, statutory mandates, and overlapping jurisdictions.
- d. NRC and EPA would resolve their overlapping responsibility for regulating mixed waste by simply determining whether the largest contributor to the waste's hazard is radiological or chemical, and giving the lead to the agency that regulates that hazard. As needed, the agency that does not regulate the hazard could consult on, but not concur in, the treatment and disposal of that waste. This feature benefits from the particular expertise of each agency and recognizes that either agency's disposal regulations can be expected to provide adequate protection from both types of hazards.

These deal with areas about which I have little personal knowledge, so I am not advocating them but merely raising them to the attention of the Steering Committee.