

Georgia Department of Natural Resources

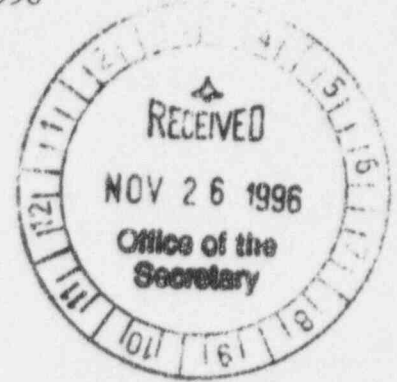
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Lonice C. Barrett, Commissioner
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DSI-4
(28)

November 21, 1996

Mr. John C. Hoyle, Secretary of the Commission
U.S. Nuclear Regulatory Commission
ATTN: Chief of Docketing and Services Branch
Washington, DC 20555-0001



Dear Mr. Hoyle,

Please accept these comments on the Direction Setting Issue (DSI) papers issued by the Nuclear Regulatory Commission (NRC) as part of the Strategic Planning initiative.

The Radioactive Materials Program of the Georgia Department of Natural Resources is submitting comment on DSI #'s 4, 7 and 24 because these have the potential to impact directly and immediately on our radiation safety program. All other DSI's also have the potential to affect our program. Although we are not submitting comments on the remaining issue papers we fully support and endorse the comments by the Organization of Agreement States and the Conference of Radiation Control Program Directors on these DSI's.

Thank you for the opportunity to provide comments, both in written form and orally at the previously held public hearings.

Sincerely,

A handwritten signature in cursive script that reads "Thomas E. Hill".

Thomas E. Hill, Manager
Radioactive Materials Program

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DSI-4

**Comments on USNRC's Strategic Assessment and Rebaselining Initiative
by the Georgia Department of Natural Resources Radioactive Materials Program**

Direction Setting Issue Paper # 4
"NRC's Relationship with Agreement States"

Summary

The Direction Setting Issue (DSI)--"What should be NRC's strategy regarding States becoming and remaining Agreement States?".

The NRC recognizes that the Agreement States consider themselves co-regulators (strategic partners) with the NRC who desire a very strong role in the development of criteria and regulations. Section 274 of the AEA permits the NRC to relinquish authority to individual states without expertise equivalent to that of the NRC. The States also recognize that under Section 274 the NRC has an oversight responsibility with regard to the Agreement States. The NRC should acknowledge that the states now have equivalent expertise in the subject of radiation safety, and the NRC should work with the 29 Agreement States as strategic partners to protect the people of this country from unnecessary exposure to radiation.

The NRC should return to the strategy in place prior to October 1, 1996. Option 3 with some modification is appropriate. Specifically, 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 "strategic partners" with the NRC for AEA materials; and earnestly seek appropriations for the functions involving Agreement States.

Specific Comments

The mission of the NRC is ... to ensure adequate protection of the public health and safety.... One way NRC's mission is accomplished is through the Agreement States. At the 1989 Agreement States meeting Dr. John Montgomery, then Deputy Administrator, NRC Region IV in his keynote address to the meeting made some most positive remarks about the partnership type relationship between the states and the NRC that were consistent with the states concept of how we must relate with each other. I find that relationship defined in DSI # 20 as "Strategic Partnering". Strategic Partnering is a relationship which is less "donor" helping "recipient" and more equal and cooperative. Such a relationship encourages states to contribute more of their scientific and technical capabilities to enhance radiation safety nationwide. Strategic partnering with the states assumes that NRC's primary role would be assisting states to strengthen their capabilities. Primary assistance to the Agreement State Programs in strengthening their capabilities has historically been funding for Agreement State training and technical assistance. The NRC should not charge states for technical assistance or training as long as it is more effective in fulfilling its mission to have the Agreement States

conduct a regulatory program within their borders.

Since the mid 1960's the states have competently regulated the majority of the licensees and radioactive material in the country. The states regulate the source of the majority of man-made radiation to which the nation's people are exposed. Regulation of AEA material accounts for only about 25% of a State's regulatory program. The NRC has a role under the AEA that is not provided to the Agreement States. The difference in roles should not result in failure to recognize that in most respects, the Agreement States have equal responsibility and function and an even larger scope of sources of radiation to regulate.

The NRC must recognize states as "strategic partners" with the states and NRC jointly regulating AEA materials and the states regulating machine produced radiation and naturally occurring and accelerator produced radioactive material (NARM). Recognition as strategic partners would not mean that the states should pay the costs as stated in DSI # 4. The Agreement States provide many benefits to the NRC and its licensees. See the September 1996 Organization of Agreement States resolution pertaining to training and funding which was an attachment to letter dated October 3, 1996 from Bob Quillin, Chairman, OAS to Chairman Jackson (copy attached).

The NRC's entire discussion at Option 4 regarding the states as co-regulators should be replaced with a simple statement that the NRC recognizes the Agreement States as strategic partners, and the NRC will seek appropriations for the Office of State Programs and the Agreement States training, travel and technical assistance. A modified Option 3 with the NRC continuing to fund Agreement States training, travel and technical assistance is the best choice from a national policy perspective.

Although addressed above, a more detailed response to the items specifically requested follows the stated items below.

1. What, if any, important considerations may have been omitted from the issue papers?
 - (I) The benefits the NRC and its licensees receive from the Agreement States without compensation, and therefore the financial responsibility already shared for the program. The NRC has a role under the AEA that is not provided to the Agreement States. The difference in roles should not result in failure to recognize that in most respects, the Agreement States have equal responsibility and function and an even larger scope of sources of radiation to regulate.
 - (II) Acknowledgment that many things the NRC wants the Agreement States or the Agreement State's licensees to pay for would be done by the NRC regardless of the number of NRC licensees.
 - (III) Page 6, Section B. External Factors, Paragraph 1, last sentence - The NRC should have clearly stated that the challenge to the NRC's compatibility "requirements" for Agreement State programs has been based on the NRC's claim that

the AEA "requires" compatibility after states become Agreement States rather than the cooperation to maintain compatible programs pledged by each of the parties in the signed Section 274 agreements.

2. How accurate are the NRC's assumptions and projections for internal and external factors discussed in the issue papers?

Some specific comments follow:

(I) Page 7, Paragraph 2 - The NRC states that it probably requires a minimum of 500 - 1,000 licensees to have a viable program. The statement is not justified. Georgia has less than 500 licensees and our program would remain viable even if NRC's byproduct material program ceased altogether.

(II) Page 8, Item 2, Paragraph 2 - The NRC does not acknowledge that it would do most of the work even if there were no Agreement States, therefore it is misleading.

(III) Page 11, last sentence - The NRC has considered the Agreement States to be an integral part of the Federal regulatory system, as in NRC's "national program." Working with the NRC as strategic partner to decide what should be regulated, how to regulate it and what the wording of the rules should be has been the goal of the early and substantive input sought by the Agreement States. In such a process there would be no issue of "concurrence" before rules are issued.

(IV) Page 12, Paragraph 4, and Page 16, Last Paragraph - The NRC should never consider walking away from regulating licensees in a state where there is no Agreement State program.

(V) Page 15, Paragraph 3 - I fail to understand why NRC staff thinks the Agreement States should pay for NRC's development of regulations that NRC would develop even if it had only federal facilities or one small state to regulate. Georgia would expect to support development of model regulations by an independent organization for all radiation regulatory agencies, but not efforts by the NRC to develop regulations for the NRC's licensees. As strategic partners we can develop model regulations through the Conference of Radiation Control Program Directors (CRCPD). Currently, model regulations are developed mostly by efforts of staff of the states whose time is paid for by the states.

(VI) Page 16, Paragraph 2 - Georgia does not think that this option would cause NRC/Agreement State relations to become more formal and potentially more contentious. If the NRC recognized that the Agreement States are already its strategic partner, the opposite effect would be likely. The occasional contentiousness is the result of the NRC's continued treatment of the Agreement States as something less than strategic partners.

(VII) Page 17, Section V, Paragraph 2, sentence 3 - The NRC should earnestly pursue seeking appropriations to fund these items.

(VIII) Page 20, Option 4, sentence 2 - We believe Alternative #2, the way things were prior to October 1, 1996, rather than Alternative #1, is the most compatible choice for this option.

3. Do the Commission's preliminary views associated with each issue paper respond to the current environment and challenges?

It is questionable. Page 24, Section VII -Funds available for tangible incentives to encourage states to enter 274 agreement would be wiser spent on training, travel and technical assistance to states which will send a message that the NRC and its licensees will benefit from new states becoming Agreement States and its overall costs of such regulation on a national basis will be lowered. NRC's investment in strategic partnering is a very cost effective way of achieving NRC's mission of protecting public health and safety on a national basis, i.e. NRC's "national program".

4. The NRC particularly solicits comments on whether NRC should fund Agreement State training, travel, and technical assistance.

The NRC should fund Agreement State training, travel, and technical assistance. The many benefits the NRC receives from the Agreement States, without reimbursement, were left out of the document. The document is not an accurate representation of the benefit/cost situation. The Commission should consider at least the benefits the NRC and its licensees receive without reimbursement set forth in the September 1996 Organization of Agreement States resolution pertaining to training and funding which was an attachment to letter dated October 3, 1996 from Bob Quillin, Chairman, OAS to Chairman Jackson (copy attached).

In **Section III. DISCUSSIONS**, in B. Discussion of Subsumed Issues, the NRC posed three questions.

1. If the number of Agreement States increases and the number of NRC licenses decreases, what should be NRC's strategy.

The NRC should provide the services to its licensees that the Agreement States provide their licensees and should receive funding for all its activities related to other federal agencies from those agencies or from appropriations. All costs related to international activities and Indian Tribes should be from appropriations. The NRC should work with the Agreement States as strategic partners in the development of draft model regulations to reduce the cost for such activities which would minimize the related compatibility issues.

2. Should NRC continue to provide free training, travel, and technical assistance to the Agreement States?

Maybe the question should have been "Should NRC continue to invest in training, travel, and technical assistance for the Agreement States?" Yes.

As stated earlier, the Agreement States do work for the NRC that is likely of greater value than the training, travel, and technical assistance provided by the NRC to the Agreement States. NRC's investment in strategic partnering is a very cost effective way of achieving NRC's mission of protecting public health and safety on a national basis, i.e. NRC's "national program".

3. What should be NRC's policy with respect to suspension or termination of an Agreement State Program that does not satisfy evaluation criteria?

The Commission should evaluate the recommendations of the MRB that evaluated the Agreement State program and discuss the NRC's options with the highest levels of the state government involved. This process would likely result in an agreeable resolution without a formal adversarial legal process. Anything more stringent would not be in accord with the agreement signed by the state and the Commission.

In Section VI. **RELATED ISSUES**, three additional issues are posed. These issues are:

1. To what extent should NRC's review of an Agreement State's LLW Program address that State's ongoing review of a proposed LLW facility?

Georgia does not have a LLW and therefore has no comment.

2. What is the proper strategy for NRC's independent radiation monitoring program?

The NRC should fully fund the states independent radiation monitoring programs from funds paid the NRC by the utilities. This is a bargain for the NRC. The states are doing the program for less than the NRC could do it for themselves. The Independent Measurements (IM) Program provides the ONLY physical oversight and verification of NRC licensee environmental measurements. NRC officials have acknowledged, through the Systematic Analysis of Licensee Performance (SALP) process, that state environmental measurements performed under the IM Program are integral to NRC's inspection program regarding nuclear power plant licensee environmental programs. Without the physical oversight provided through the IM program, NRC would have no means by which to assess the accuracy of licensee environmental monitoring activities, nor would NRC have any basis to determine whether or not the licensee has reached proper conclusions regarding the environmental impacts of its operations. Page 21, Paragraph 3, last sentence - We do not agree that this program is only an enhancement. While we understand and agree with the movement towards licensee

self-assessments and limited NRC oversight, in lieu of detailed NRC inspections, the general public will not accept the results of licensee self-assessments in the area of off-site environmental monitoring. One only has to look at the public relations problems which the Department of Energy (DOE) faces at its nuclear facilities around the country to see that environmental self-assessments, absent credible independent verification, result in public distrust. Although the public are interested, in a general sense, in overall nuclear safety, they are vitally interested in whether or not radioactive materials are present in the air they breathe, the water they drink and the food they eat. Page 22, Paragraph 4 - We and probably most members of the public do not share the level of confidence expressed.

3. Should NRC define its Indian trust responsibilities and relationships with Indian Nations by a statement of policy?

The NRC could use its policies related to interactions and cooperation with the Agreement States as a model for relationships with Indian Tribes, but we do not see how that make this a related issue to this DSI.