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DSI-4
(29)



November 21, 1996

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

Dear Mr. Hoyle:

We have reviewed several of the Strategic Assessment Issue Papers and have prepared comments on individual issue papers. These papers are enclosed. We also support the comments of the Organization of Agreement States regarding all issue papers. Thank you for the opportunity to comment on these important direction-setting issues for NRC. The extension to the comment period was also appreciated. If you have questions, do not hesitate to contact me.

Sincerely,

William J. Sinclair, Director
Division of Radiation Control

c: Dianne Nielson, Ph.D., Executive Director, UDEQ
Bob Quillin, Chairman, Organization of Agreement States

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STRATEGIC ASSESSMENT ISSUE PAPER

DSI 4 - NRC'S RELATIONSHIP WITH AGREEMENT STATES

STATE OF UTAH COMMENTS

The basic question asked by NRC was: "What should be NRC's strategy regarding States becoming and remaining Agreement States?"

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

This would require NRC to request that the Atomic Energy Act be amended to have EPA take over the responsibility for the regulation of Section 274 materials. Being housed in and familiar with working with EPA programs within the Utah Department of Environmental Quality, there might be some advantages to Utah if EPA assumed the Agreement States program. First, EPA provides grant monies to programs which can cover some or all costs of a program. NRC does not. EPA funding usually includes program development monies to establish new programs or other monies for special activities. Second, the Regional office of EPA is more centrally located in Denver, Colorado compared to Arlington, Texas. EPA staff are more accessible as a result. Thirdly, EPA provides training at no cost to State staff in a wide variety of areas including waste management and remediation, air and water quality, and inspection and permitting in the respective program areas. EPA will provide training at a location designated by the state within its borders for any interested staff. Fourth, for an "environmental" organization, upper management is more familiar with and used to working with their EPA counterparts. Contact with and familiarity with the NRC program is less.

However, there are major disadvantages to this option. Why would 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. 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. The authorization process (kin to the NRC Agreement State process) in some programs is very

cumbersome and difficult. How would a transition from Agreement State to EPA Authorized State occur? What would be the transition process? The state program review process is also more burdensome compared to the new NRC IMPEP process. States could expect semi-annual reviews instead of reviews every three to four years. Environmental agencies might also tend to fracture a radiation staff and "farm" out the expertise to other program areas such as waste management, water quality, or air quality. For many years there has been an on-going concern of the need for a consolidated radiation agency within state governments.

As a result of the many disadvantages and unanswered questions regarding a transition from one federal agency to another, Utah perceives Option 1 as an option that should not be seriously considered.

Option 2: Strongly Encourage States to Become Agreement States

One gauge of a program is the participation by states in assuming primacy. EPA programs such as water quality, air quality, drinking water, and waste management have nearly 100% participation of states (usually 48 or 49 out of 50). Why is this? It is because of a strong commitment by EPA to provide a base funding and other tangible incentives for states to maintain primacy. NRC cannot expect a "high" participation until incentives with tangible rewards such as seed money, grants, and funding for training, travel, and technical assistance are provided.

From the Utah perspective, NRC has been discouraging state participation by recent policy decisions of eliminating training and travel monies. Utah's experience with trying to negotiate reimbursable or free services with the NRC has not been positive. For example, NRC has issued a license to Envirocare, a commercial radioactive waste disposal facility, to dispose of uranium and thorium mill tailings. NRC licensing actions occur in Rockville, Maryland, NRC inspection activities come out of Arlington, Texas. Is it cost effective for NRC to send three or four people from throughout the United States two to three times a year to assess the compliance status of one NRC licensed unit at the facility? Is public health and safety being adequately protected by these cursory visits? In contrast, the Division of Radiation Control maintains full time inspection capabilities during Envirocare operations. The licensing/inspection workload for the facility could be accomplished at a substantial less cost than the current NRC program. The same situation could apply to the two standby and/or operating Utah uranium mills and required inspections.

When Utah approached NRC in 1995 with a proposal to gain primacy for the NRC inspection and licensing activity on a partial agreement state basis, we were told "no" because of legal constraints. When we approached NRC on a Memorandum of Agreement (MOA) basis for an inspection arrangement for the uranium/thorium disposal unit at Envirocare, we were again rebuffed because the "details" of the MOA were too difficult to work out. We recognize that other opportunities exist in the area of federal facility inspections of radioactive materials users such as federal laboratories, Veterans Administration Hospitals, and Department of Defense facilities, several of which are located

in Utah. Working with Agreement States or potential Agreement States to provide services for certain NRC activities in exchange for NRC training could be a positive incentive in retaining or encouraging new Agreement States.

This option also appears to be unlikely because new federal monies are, have been and will continue to be unavailable under the current federal government downsizing initiatives. However, NRC should explore all available options for providing credit to states that perform NRC activities under an instrument such as a Memorandum of Agreement in exchange for NRC services such as training and/or technical assistance.

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

This option's basis is centered around five activities:

- (1) Statement of Principles and Policy for the Agreement States Program
- (2) Policy Statement on Adequacy and Compatibility of Agreement States
- (3) Continuation of IMPEP on an interim basis
- (4) Nuclear Materials Events Database reporting
- (5) Joint rulemaking efforts

All of the above activities are improvements to the current Agreement State process but fail to address the basic programmatic concern of staff training equivalency. This is an activity ongoing at present that needs to be added to the initiative list. For most states, the core issue still centers on the training money issue and bringing the above activities to resolution may still not be satisfactory for some states to continue in the program.

Utah will continue in the Agreement States program and supports any and all improvements to the Agreement States program.

Option 4: Treat Agreement States as Co-Regulators

NRC has the opinion that in order to be a co-regulator that Agreement States have to be and act exactly like NRC. NRC points out in the position paper that initiatives could be reconsidered, meetings and workshops would be held if States paid their way, and States would pay for NRC to interpret their rules that States have to adopt verbatim under compatibility requirements. A different view of co-regulator might be that Agreement States and NRC have the same health and safety goals. States and NRC have limited resources and as such might approach the co-regulator issue on the basis of "shared" resources. In fact, states already accomplish many tasks for NRC and are not reimbursed for such services. These tasks are never taken into account.

Utah believes that NRC has misinterpreted the term of "co-regulator" and as such will not support this option until the term of "co-regulator" represents the shared vision of NRC and the states.

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

Utah believes this option is not a serious consideration without appropriate funding. It is noted that if NRC does not want to accept regulation of DOE facilities without adequate funding, the same logic applies to Agreement States to accept regulation of AEA materials.

In conclusion, Utah recommends

- (1) NRC continue the initiatives outlined in Option 3 to improve the Agreement State/NRC process;
- (2) NRC seriously reconsider the training, travel, and technical assistance issue. The Utah position on this issue was previously outlined to the Commission in a letter from Dianne R. Nielson to Richard Bangart of May 1, 1995 and supported unanimously by the Utah Radiation Control Board at their May 1995 meeting that NRC continue such funding;
- (3) NRC should maximize partnering opportunities with states that are a benefit for both agencies; and
- (4) NRC should re-define the role of states as co-regulators as stated in DSI-4.

Submitted by:

Bill Sinclair, Director
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Utah Department of Environmental Quality
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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 14, 1995

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Dianne R. Nielson, Ph.D.
Executive Director
Utah Department of Environmental Quality
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CHANGE IN NRC FEE POLICY REGARDING AGREEMENT STATE TRAINING, TRAVEL, AND
TECHNICAL SUPPORT

Dear Dr. Nielson:

For many years, the Nuclear Regulatory Commission has provided training, travel, and direct technical (licensing and inspection) support at no cost to the Agreement States. Although the Atomic Energy Act authorizes the NRC to provide this assistance with or without cost, the Commission has historically included these costs in its budget requests to the U.S. Office of Management and Budget and the Congress.

Public Law 101-508, Omnibus Budget Reconciliation Act of 1990, as amended, requires the NRC to collect fees from its licensees that approximate 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund. The cost of NRC support provided to the Agreement States, which is included in the NRC's budget request, consequently increases the fees paid by non-Agreement State licensees.

License fees have been an area of increasing concern, and fairness and equity issues raised by licensees and others are of particular concern. Last year, Congress directed that we review our annual fee policy, solicit public comment on the need for changes in the policy and recommend to the Congress any changes to existing law needed to prevent placing unfair burdens on NRC licensees. In response to this direction, the Commission submitted a report to Congress in February 1994 concluding that some modifications to existing laws were needed.

One area identified in the report related to how costs for administration of the Agreement States program should continue to be handled by the NRC. The report recommended that the costs for the Agreements States program, and other programs where there is not a direct linkage to an NRC-licensed activity, be deleted from the fee recovery base. Neither Congress nor the Administration has pursued the recommended legislative actions.

To minimize the inequity of non-Agreement State licensees paying for NRC assistance provided directly to the Agreement States, the Commission has decided to discontinue inclusion in our budget training, travel, and technical support now provided to Agreement States at no charge. This assistance will continue to be provided, however, on a cost reimbursable basis. We recognize the impact this change in our longstanding policy will have on the Agreement States, but the inequity of NRC licensees' funding direct support to Agreement States has surfaced as a concern that must be resolved.

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State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY
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May 1, 1995

Richard L. Bangart, Director
Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Bangart:

We are in receipt of your letter of March 14, 1995 which indicated a change in NRC Fee Policy regarding Agreement State Training, Travel, and Technical Support. First, we were extremely disappointed that this correspondence was sent to all of the Agreement States without prior discussion of potential alternatives to this course of action. It is apparent that NRC's Report to Congress regarding the Licensee Fee Policy was the determining factor. In this report, NRC indicates that their licensees are faced with the burden of funding the oversight of the Agreement States program. As such, an inequity exists among NRC licensees.

During the recent Mid-Year All Agreement States Manager's meeting, a presentation was given by NRC staff concerning this issue. It was stated that the program cost for training, travel, and technical assistance to Agreement States amounts to \$1,500,000 or .3% of the NRC operating budget. No one could identify the breakdown of the agreement state oversight costs nor provide a figure as to how much of the fee goes to support this portion of the program for a typical licensee. Additionally, there was no breakdown of training costs provided to the participants. The paper which may have contained some specific cost information used to brief the Commission on the fee issue was not available for review by the Agreement States until after the Mid-Year Manager's meeting and following some very vocal opinions regarding the release of this information. NRC pointed the blame to Congress for not providing taxpayer monies to fund the Agreement States oversight program as well as other programs such as the international program.



Contracting federal services is not without precedence in Utah as the Environmental Protection Agency has been contracting PCB inspection services with the Department for several years. The Division of Radiation Control currently contracts with the Food and Drug Administration (FDA) to conduct certain FDA inspections of x-ray machines in Utah on their behalf. The FDA mandates that all of their inspectors meet certain requirements and pass certain tests. The FDA provides the training and support necessary for the states to conduct this aspect of their program. Other opportunities exist in the area of federal facility inspections of radioactive materials users such as federal laboratories and Department of Defense facilities.

(2) Reduction of the State reciprocity fee for NRC licensees:

In conjunction with other Agreement States, Utah would be willing to consider lowering of reciprocity fees for NRC licensees working in Utah. On a nationwide basis, this could provide substantial funding for the projected revenue losses due to the travel/training costs provided to Agreement States.

(3) Eliminate the training costs/States pay for travel

It appears that NRC will continue to provide training to the NRC staff at no cost, so it is difficult to ascertain how collection of tuition from states would be a benefit since NRC is paying for the course anyway for its own staff. Therefore, NRC could continue to fund the training costs and the states would pay for travel. However, regionalized training could present a more cost effective means to addressing the travel cost issue. NRC could also eliminate the "contractor" training and rely again on state or NRC staff to conduct the training. Many NRC courses were started by states seeing a training need in a certain area.

(4) Place this policy position on hold until the Commission change

With the complete change of the Nuclear Regulatory Commission membership occurring in July 1995, it seems prudent that such a controversial issue as this funding elimination should be reconsidered by the new NRC Commissioners. The Organization of Agreement States should have the opportunity to provide information to the "new" Commission regarding the benefits associated with the 29 States who have Agreement status.

In conclusion, we feel that NRC has unilaterally undermined a guiding principle of the Agreement States program. Providing training to state personnel is a key component to ensuring that the public is being protected from radiological hazards throughout the United States. We ask for your reconsideration of this important national policy issue. The State of Utah by itself and in conjunction with the Organization of Agreement States simply asks that NRC live up to



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 19, 1995



Mr. Robert J. Hoffman, Chairman
Utah Radiation Control Board
Department of Environmental Quality
168 North 1950 West
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Dear Chairman Hoffman:

We have received your May 19, 1995, letter to Mr. Richard L. Bangart supporting the May 1, 1995, letter from Dr. Nielson and we thank you for your comments on the forthcoming changes in the U.S. Nuclear Regulatory Commission's (NRC) policy on funding of Agreement State training, travel, and technical assistance. The intent of the policy changes addressed in the March 14, 1995 letter was to address the fee inequity issue. An estimate of costs for the training in 1997 is being developed and will be provided to all the States when it is completed. Based on your comments, and those from other Agreement States, NRC staff is also assessing the impacts of the cost-reimbursement decision on the Agreement State program and plans to present the collective views of the States to the Commission.

If you have any further comments on the policy, its implementation, or how best to resolve the equity issue, please write or contact me at (301) 415-3340 or Dennis Sollenberger at (301) 415-2819.

Sincerely,

Richard L. Bangart
Richard L. Bangart, Director
Office of State Programs

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