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NRC AND THE STATES -- PARTNERSHIP IN REGULATION

Commissioner Richard T. Kennedy
U. S. Nuclear Regulatory Commission

Remarks presented at the Third Annual UMR-MEC Conference on Energy at the University of Missouri-Rolla, Rolla, Missouri, on October 13, 1976.

Mr. Chairman, Ladies, and Gentlemen,

It is a great pleasure to be with you today to discuss the NRC-State Partnership for nuclear regulation. This is one of the areas in which I have taken a special interest for the Commission, and I welcome the chance to share with you some thoughts on what we have accomplished and where we are headed.

By way of background, let us focus for a moment on the contribution nuclear power makes to the regional power generating base in our country. There are now 62 nuclear power plants with an installed capacity of 45,000 megawatts of electricity in 24 states. An additional 175 plants with a capacity of 192,000 megawatts are planned or under construction in 34 states. Here in Missouri two 1100 megawatt plants are under construction in Callaway County which, when they come on line in 1982, will contribute significantly to meeting Missouri's electrical energy needs.

The national energy policy calls for the further expansion of nuclear generating capacity. But this federal policy in no sense means that this development should take place at the expense of the states

and the environment. It is apparent to me, in fact, that the regulation of nuclear power in the future will require even greater cooperation between the states and the federal government.

We already have in place a good foundation on which to base such cooperative efforts. The AEC had long espoused programs for sharing regulatory responsibility with the states and for improving their capacity for effective nuclear regulation. The NRC, since its establishment in 1975, has attempted to expand those programs. Let me cite just a few examples:

- (1) There are now 25 agreement states. They exercise regulatory jurisdiction over some 10,500 nuclear material licenses. NRC by way of contrast administers 8,500 such licenses directly.
- (2) Nineteen states participate with the NRC in monitoring low-level radioactive emissions at the point of release at nuclear power plants.
- (3) Contracts for the surveillance of radioactive materials transportation have been executed between NRC, the Department

of Transportation and nine states, including Missouri.

- (4) About 320 state personnel have attended our various specialized training courses so far this year as contrasted with 200 last year.

Moreover, in order to underscore our commitment to working with the states, NRC last June established a separate Office of State Programs now headed by Robert G. Ryan, who is here with me today. We believe that cooperation with the states is of such importance as to require a single unit to coordinate our varied relationships. In addition, the Commission is looking closely at the advantages of greater regionalization. In that connection, we are considering establishing a liaison officer in each of our five regional offices who would maintain direct contact with the states.

Progress in Cooperation

These steps have contributed to the progress that has been achieved in the effort to broaden cooperation with the states. Let me touch just briefly on a few areas of specific progress which I believe are among the most important.

A major goal of the Commission has been a reduction in overlapping and duplicative regulatory requirements at the federal, state, and local level. Effective coordination at all levels reduces everyone's work load, ensures maximum regulatory effectiveness, and -- more important -- eases the economic costs of regulation to the utilities and their customers and to the taxpayers.

We passed a major milestone toward this goal at the federal level last year when a second Memorandum of Understanding was concluded with EPA concerning our overlapping responsibilities under the Fed-

eral Water Pollution Control Act and NEPA. This Memorandum designates the NRC as lead agency in the preparation of environmental impact statements for nuclear facilities making it unnecessary for EPA to prepare its own separate statement on water quality and biota. The Memorandum also establishes a procedure for working with EPA on the issuance of Section 402 water quality discharge permits. These permits now can be issued well in advance of the NRC's issuance of a construction permit. Decisions about water discharge from nuclear power plants must be made very early in the design stage. The advance issuance of a discharge permit, therefore, makes a great deal more sense than the previous "180 days before actual discharge" rule.

EPA has delegated to 27 states the authority to grant Section 402 discharge permits. The NRC is now starting to work with these states to obtain acceptance of the principles outlined in the Memorandum of Understanding.

- (1) Through the auspices of the National Governor's Conference, sixteen states have expressed interest in implementing these principles and we have entered discussions with six of them. We will begin discussions with the others shortly.
- (2) We will be drawing upon the interstate nuclear boards, the Western Governor's Regional Energy Policy Office, and similar groups for support in this program.
- (3) We also intend to work with any affected state as soon as we become aware that a company plans to construct a nuclear power plant or any other nuclear facility.

Joint Hearings are another area in which there has been progress. They hold considerable promise for increasing NRC cooperation with the states in matters of concurrent regulatory jurisdiction. Such hearings can reduce the effort and cost for the parties involved, while also creating a complete evidentiary record on the matters treated in the hearings.

Recently the Atomic Safety and Licensing Board agreed with the state of Maryland on a format for joint environmental hearings on the proposed Douglas Point nuclear power plant. The first phase of the joint hearing was conducted in July and from early reports it is expected to be a great benefit to all parties.

The Commission also has been discussing with the New York State Siting Board the possibility of joint hearings on the proposed Green County nuclear power plant and has developed a draft protocol for the conduct of such joint hearings. The draft protocol was published in the Federal Register for comment, and the New York State and NRC staffs are evaluating the comments received.

The siting of nuclear facilities appears to be the area in which maximum benefit can be achieved from state-federal cooperation. There has been an increasing tendency in the states to adopt legislation establishing broad controls over the selection and certification of sites for power generating facilities. Twenty-six states now have some form of siting authority. These actions reflect a legitimate concern in the states over the need for better planning in the use of manpower and resources.

Last year's NRC Federal-State Conference on power plant siting was attended by representatives from 27 states and five other federal agencies. The working

committee of the Conference developed 16 recommendations relating to state participation in the licensing process for nuclear power plants. Fifteen of these recommendations have been or are being implemented by the NRC.

One of the recommendations called for was the appointment of state liaison officers to serve as the principal technical-level contacts with NRC on environmental questions of mutual interest. Eleven states have thus far appointed such officers. We have been gratified by this response. But needless to say, we would very much like to see the appointment of more liaison officers, especially from states with ongoing licensing proceedings. I can't let this occasion go by without encouraging Governor Bond to designate a liaison officer from Missouri.

This year's siting conference, which was held in Denver during June, was attended by 40 states -- thirteen more than last year -- and five federal agencies. The success of this year's meeting can be measured by the free exchange of ideas that took place during the plenary and workshop sessions.

Because there is great diversity in state siting programs, it is nearly impossible to accommodate both state and federal interests without some duplication. We have underway with the state of Maryland a joint demonstration program that should give us experience in coordinating site evaluation in situations where a state has comprehensive siting legislation. The project uses Maryland data on land use characteristics and socioeconomics, and uses NRC data on safety parameters, to test a methodology for site selection and evaluation.

We also are continuing to explore the feasibility of coordination at the region-

al level. Under contract with the NRC, the Southern Interstate Nuclear Board recently completed a study of multi-state participation in nuclear power plant siting affecting adjoining states. This study developed the procedures needed to implement regional site evaluations. NRC now has negotiated a contract with SINB for a follow-on project which will demonstrate the efficacy of these procedures by analyzing the capabilities of SINB member states to put them into practice. SINB will document aspects of these procedures which can be applied to other regional siting situations.

I have spent considerable time discussing state-federal cooperation on nuclear facility siting because it is one of the most rapidly expanding areas of progress. It is one which I believe holds great promise for easing the difficulties of coordination caused by varying state laws, and their interface with federal laws and regulations.

Now, however, I want to turn to thornier issues -- issues which will directly affect the future development of nuclear power.

Issues for the Future

At the federal level, I would say that closing the fuel cycle presents us with our most important regulatory issues. Plutonium recycle and long-term radioactive waste management are the two most important questions presently awaiting resolution. In both cases, the necessary technology is well developed, but the final decisions remain to be made.

Plutonium recycle clearly is a controversial issue of national scope. The toxicity of plutonium, the need for more comprehensive safeguards, environmental issues, and the economics of recycling -- all of these are complex matters which

must be fully considered before the Commission makes its final decision on wide-scale use of mixed oxide fuel. In August, we issued GESMO, a final impact statement on the health, safety, and environmental aspects of plutonium recycle. A draft safeguards supplement to this statement will be issued this fall and the final environment impact statement on safeguards alternatives will be published early next year.

We have announced a format for extensive public hearings on plutonium recycle. A most careful and comprehensive examination of this question is being conducted to assure that our final decision takes into account all of the many social, economic, and technical considerations which are involved. Throughout, we are placing great emphasis on the openness and thoroughness of decisionmaking process in an effort to enhance the public acceptability of the ultimate decision, whatever it may be.

Management and long-term storage of radioactive wastes has become a source of growing uneasiness. The problem was highlighted by recent court decisions -- the Vermont Yankee and the Midland cases -- in which it was held that the NRC's rule governing the consideration of reprocessing and waste management in the licensing process must be more fully documented and explained.

In response to the court's actions, the Commission announced that we would temporarily discontinue the issuance of full power operating licenses, construction permits and limited work authorizations. At the same time, we directed the staff to undertake, on an expedited basis, the preparation of a revised assessment of the environmental impacts of fuel reprocessing and waste management. This

assessment, which is to be released this afternoon, concludes that the environmental impacts associated with the reprocessing and waste management portions of the fuel cycle are small.

We believe this assessment will serve as the basis for an interim rule which could be in place within 3 months. Then we can again proceed with licensing actions. If this interim rule is adopted, a public hearing will be held on whether it should be amended for future use as a final rule. We expect that about 18 months will be required for completion of the public hearings and publication of the final rule.

Admittedly, there has been indecision in development of a clear policy for dealing with permanent waste storage; and that indecision is regrettable. But the technology on which to base a national policy is being made available. The time for action is now -- and action is underway which will lead to a definitive and comprehensive long-term policy.

- (1) An OMB-led Interagency Task Force was formed last March and is coordinating and expediting the federal decisionmaking processes in this vital area.
- (2) ERDA plans to commit \$87 million to commercial waste management research during the coming fiscal year, a sixfold increase over the past year.
- (3) The NRC is developing standards and criteria to guide ERDA's waste management program and to assure that we are ready to evaluate the facilities which ERDA develops and which we then must license and regulate.

- (4) NRC also expects to publish for public comment proposed criteria for solid-form storage of high-level wastes late this year.

I know how important the waste management issue is to states. With that interest very much in mind, NRC is taking steps to enlist advice and cooperation of state agencies which have program or regulatory responsibility and expertise. Waste management -- like plutonium recycle -- is an issue which can only be resolved through full and open interchange among all affected parties.

At the front end of the fuel cycle, there is growing concern over the future availability of uranium as an economically viable reactor fuel. The price of uranium has soared in response both to the inflated prices of other energy resources and to the perceived limitations on presently known uranium reserves. At least one supplier has indicated that it will not be able to supply uranium fuel at the previously contracted price to many utilities.

Thus, utilities are now seriously asking: "Will there be enough uranium to fuel present and planned reactors? Will the fuel be available at a price which keeps nuclear power competitive with fossil fuel generation?"

To the first question, I would point to a study by the President's Energy Resources Council that indicates that there is enough uranium in the U. S. to support continued construction of nuclear power plants through 1990, and probably beyond that.

As for economic viability, ERDA notes that because natural uranium is only about five percent of the cost of nuclear power, a tenfold increase in uranium prices would

result in a less than doubled power cost. I must also note here that the ERDA projections do not assume plutonium recycle, which if approved could reduce fuel costs for light water reactors by approximately 9% according to estimates reported in GESMO. In addition, successful development of a commercial breeder reactor presumably would reduce uranium demand. But these are still speculative developments at this point.

A major non-technical issue, which is assuming increasing importance in both state and federal deliberations, is the socioeconomic impact of new nuclear facilities. As the TVA experience has made abundantly clear, there are many unanticipated social and economic consequences when a billion-dollar facility is constructed in a hitherto undeveloped rural area.

Our Nuclear Energy Center Site Survey discussed the socioeconomic impact of establishing large nuclear parks. We are now attempting to assess these consequences even more directly through the siting contracts with the state of Maryland and the SINB which I mentioned earlier. We know that these issues are of special concern to state and local planning authorities. I assure you that a greater degree of attention will be given to them in future licensing proceedings.

All of these are indeed thorny issues; but they are issues for which solutions are being vigorously pursued.

Before closing, I would like to refer briefly to one other issue which needs the careful attention of state and federal authorities alike -- the question of federal pre-emption of regulatory authority in nuclear matters.

It has been a decade-and-a-half since the 1959 legislation created a formal state

role in the regulation of radiation hazards. Consistent and growing pressure has developed over that time for greater state involvement in nuclear regulatory issues. In some instances, efforts have been made to arbitrarily reallocate regulatory responsibility.

- (1) As one example, nuclear moratorium initiatives modeled on the California measure will be on the ballot in six states in November.
- (2) New York City has adopted ordinances prohibiting transport of radioactive materials through the city and permitting the city to regulate reactors located within its boundaries -- examples of a different sort.

These examples do not by any means cover the full range of potential regulatory conflicts. Offshore siting becomes a problem when states claim riparian rights on the Outer Continental Shelf. States may also attempt to utilize economic authorities to regulate nuclear development.

As I stated earlier, the NRC both recognizes and respects state concerns over the health and safety of their inhabitants, and over the impacts on state economics, environment and land use. But it would be regrettable if states used their concerns as a basis for an attempt to supplant NRC health and safety requirements.

We at NRC take very seriously our duty under the law to protect the health and safety of the American people and the environment. We have extensive staff and technical resources -- some 2,700 people and \$270 million for next year. We have the capacity to develop rigorous and effective standards for regulation, to thoroughly review applications for new

nuclear facilities, and to enforce existing regulations.

We want to assure that these resources and capacities are used to serve the public -- just as the states want to serve the public. The important point is that the public in each case is the same. State and federal efforts will serve best if they are cooperative, not competing.

I hope that I have made it clear that we do not intend that our expertise and our resources be used to exclude the states from the regulatory process. In the last year and a half, the NRC has emphasized its policy of active involvement and cooperation with the states. We are dedicated to continuing and expanding that policy's reach.

But we cannot do it alone. We need active cooperation from the states. We need the states to appoint liaison officers. We need the states to participate in our licensing and regulatory proceedings. We need the states to come to us with proposals which will benefit all.

If the states and we can avoid confrontation through cooperation, then the question of pre-emption need not be a serious issue. If we can supplement and assist each other in regulatory activity, then we can create a new partnership -- a partnership which will see its dividends in the form of maximum protection for the public and the environment, and minimum of regulatory overlap and economic cost.