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No. 99-27

(FOR IMMEDIATE RELEASE)
(Friday, February 12, 1999)

NRC TAKES ISSUE WITH DEFENSE NUCLEAR FACILITIES SAFETY BOARD REPORT

The Nuclear Regulatory Commission -- while it currently has no plans to regulate Department of Energy (DOE) defense facilities -- has taken issue with a report claiming that such regulation would be too costly and could undermine national security.

The NRC discussed its points of disagreement in commenting on a report issued last fall by the Defense Nuclear Facilities Safety Board, which monitors and evaluates the safety of DOE's defense nuclear facilities. NRC Chairman Shirley Ann Jackson, on behalf of the full Commission, forwarded the agency's comments recently to Congress and to the board chairman, John T. Conway.

In her forwarding letter, Chairman Jackson pointed out that the NRC and the DOE are now conducting a pilot program to test the effectiveness of outside regulation on selected non-defense DOE programs, "maintaining a bright line to designate clearly that defense nuclear facilities are not included in the Pilot Program." The NRC has focused on non-defense program facilities and does not currently have plans to provide external regulation to the defense program facilities. However, she added, the NRC accepts the DOE's own Working Group position on External Regulation that "all DOE nuclear facilities, including Defense Programs facilities, would ultimately be subject to full regulation by the NRC, and we observe that there is nothing in your draft report that either discusses or raises any reasonable doubt" about that view. The NRC believes that, as a general matter, DOE defense nuclear facilities should adhere to the same health and safety standards that civilian facilities must meet.

In her letter, Chairman Jackson stated that the Commission believes consideration of the questions and issues raised by Congress related to external regulation of DOE defense facilities should be deferred until the pilot program on external regulation is completed at the end of the current fiscal year. "We look forward to engaging the [Defense Nuclear Safety] Board along with other stakeholders in evaluating the outcome of the pilots and in preparing any recommendations to the Administration and Congress," her letter says.

The NRC agreed to explore external regulation of the DOE nuclear facilities after a couple of reports, prepared for the DOE based on broad and extensive

review, recommended that nuclear safety at these facilities be regulated by an authority outside of the Department.

- In December 1995, the Advisory Committee on External Regulation of Department of Energy Nuclear Safety recommended external regulation of DOE by an independent regulatory agency.
- Based on the conclusions of the DOE Advisory Committee, an internal DOE working group in late 1996 recommended the NRC as the external regulator of nuclear safety.
- In March 1997, the NRC decided to explore external regulation of the DOE nuclear facilities in response to stakeholder comments on the NRC strategic assessment and rebaselining initiative and the DOE recommendations.
- The NRC and the DOE signed a Memorandum of Understanding to establish a pilot program in November 1997 to test the feasibility of the NRC regulating certain DOE facilities through simulated regulation.
- In 1997 through 1998, the NRC simulated regulation at three pilot sites: the Lawrence Berkeley National Laboratory, in California; the Radiochemical Engineering Development Center at Oak Ridge National Laboratory, in Tennessee; and the Receiving Basin for Off-site Fuel at the Savannah River Site, in South Carolina. A fourth pilot, at the Pacific Northwest National Laboratory, has been postponed to allow broader participation of Federal and State agencies.

The pilots revealed a number of legal, financial, and policy issues which would need to be addressed before NRC oversight could be accomplished. However, the NRC believes the pilots have not revealed any issues that could not be resolved. If Congress determines that NRC should regulate the DOE nuclear facilities, and if adequate resources are provided and any necessary legislation enacted, the NRC believes it would be successful in regulating DOE nuclear facilities.

Chairman Jackson's letter to John Conway will be available shortly on NRC's web page, at www.nrc.gov/NRC/NMSS/doepilot.html

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