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STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

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November 8, 1996

U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Richard L. Bangart, Director

Gentlemen:

The Tennessee Department of Environment and Conservation Division of Radiological Health appreciates the opportunity to review the Direction Setting Issue Papers as part of the U.S. Nuclear Regulatory Commission's Strategic Assessment of Regulatory Activities. Attached are the Division's comments to specific Direction Setting Issue Papers.

If you have any questions concerning these comments, please feel free to contact me at (615)532-0364.

Sincerely,

Michael H. Mobley, Director
Division of Radiological Health

U.S. NUCLEAR REGULATORY COMMISSION
ENGINEERING & SERVICE SECTION
OFFICE OF THE SECRETARY
OF THE COMMISSION

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DIRECTION SETTING ISSUE ISSUE PAPER COMMENTS

GENERAL:

Tennessee's general assessment of the NRC's Strategic Assessment of Regulatory Activities is that the effort appears to be constrained so that only select options are presented. In many cases, those options are analyzed or presented in a manner that does not allow a fair, unbiased assessment of one option versus other options. One particular example is the statement under DSI 7, IV. OPTIONS, Option 1, Impacts, which notes: *"Such wide-sweeping legislation may be difficult to support in the absence of a compelling safety problem."*

This statement is made to denigrate the safety problems that exist in the non-AEA radiation source arena (machine source, and NORM). This is very interesting in light of the data that demonstrates that most exposure to ionizing radiation occurs in the radiation machine arena and that 50% or more of that is unnecessary. Similarly, the states find numerous situations involving NORM problems that expose the public to unnecessary radiation exposure well beyond the levels at which Atomic Energy Act (AEA) materials are regulated.

Thus the referenced statement would actually be more appropriately applied to the questioning the need for continuing the current AEA legislation in light of the safety problems that are not addressed by the AEA. Why do we regulate AEA materials to the point of decreasing return, while ignoring the larger safety issues in machine produced radiation and NORM?

It was Tennessee's impression that this effort by the NRC was to start from zero to assess what it should be doing. The information presented actually appears to be developed to justify the continuation of the NRC activities as currently constituted. It is clearly not an unbiased full assessment of what radiation protection at the federal level should be. It is clearly not even an unbiased full assessment of what radioactive material radiation protection at the federal level should be.

In several DSI's the concept of state involvement is toyed with, but full assessment is never significantly considered in the specific options. For example, in each instance in which an option considers the NRC take on non-AEA sources great pains are made to elaborate on the necessary resources that this would require when all that may be required is recognition of the resources that are in existence in the states. NRC need only become the senior partner in the operation, assuring consistency and compatibility among the programs.

Tennessee proposes one simple option for the regulation of all radioactive material.

The NRC should establish a program to regulate all radioactive material at any concentration which presents a risk beyond that presented by the natural concentrations of materials found in the earth. This should include a program involving states as integrated partners, e.g., the NRC does not have to develop everything in house. This program should address all radioactive material at all facilities. The NRC should seek a waiver of sovereign immunity in order for Agreement States to regulate all the radioactive material in all facilities (this has been done for RCRA). This would alleviate the resources the NRC now expends inspecting federal facility licensees in Agreement States and provide coverage for the non-AEA radioactive material these facilities possess and utilize. This effort would also alleviate the DOE problem by putting DOE under the combined NRC/AS umbrella. Obviously, a transition period would be necessary. Draft legislation that would accomplish this is available.

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DIRECTION SETTING ISSUE #5 LOW-LEVEL WASTE

Tennessee believes that the NRC should assume a leadership role as a strong advocate for new disposal capacity (Option 1). One mechanism for doing this is to establish a strong regulatory stand regarding the storage of low-level waste (LLW) (Option 2). This requires the NRC to totally abandon its "promotion" role and become a full-fledged radiation control regulator that "allows" the use of radioactive material provided the public, workers, patients, and the environment are adequately protected. It is not the regulators role to promote any use of radioactive material. The acceptance of this concept will help with the perception the public has of the NRC. The requirement that a licensee will not be allowed to store waste beyond a certain period without shutting down and a moratorium on new licenses in areas where there is no disposal capacity could force the issue. Another approach is to require significant financial assurances on accumulating waste (this probably should be done anyway). A recognition that most of the states have gone beyond shallow land burial to enhanced technology for disposal of LLW could lead to a greater acceptance of the "assured storage" concept (Option 6).