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STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Division of Radiological Health
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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

UNITED STATES COMMISSION
OFFICE OF THE SECRETARY
GENERAL INVESTIGATIVE SECTION

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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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Strategic Assessment Issue Paper, DSI 9, Decommissioning - Non Reactor Facilities.

Of the "Options" discussed in the Direction-Setting Issues Paper #9 (DSI 9) it is our position that the U. S. Nuclear Regulatory Commission (NRC) should work toward adopting "Option 2: Change the Decommissioning Review Process" and "Option 9: Seek Superfund Authority". Option 2 would provide for the NRC to implement a more "performance-oriented" based decommissioning review process. This would also allow the NRC to concentrate on establishing the National Standards to which a licensee must perform, if he wishes to decommission a facility, and less upon the specific details of how the licensee performs to those standards. Option 9 would provide the NRC equal authority to the Environmental Protection Agency (EPA) in its ability to make all parties involved responsible, both jointly and severally.

The following information is provided to support our choice of Options 2. and 9.

Site Decommissioning is an area for which we believe the NRC may have overlooked the need for a more pro-active stance. The current NRC methodology for decommissioning funding is sorely inadequate to address the future decommissioning needs. Our main concern with the current NRC program for decommissioning at a facility is the NRC's reliance on the "Licensee" maintaining its viability. To the contrary, the NRC should adopt a methodology which does not rely upon any involvement by the "Licensee" in any decommissioning activities. In many cases the "Licensee" is not the sole responsible party, however, under current NRC legislation, the NRC is significantly limited or even prohibited from involving third parties in a facility's decommissioning. Past history has shown us that for the most part, by the time decommissioning activities become necessary, the licensee has neither the resources, nor the ability to coherently manage a decommissioning project. It seems clear to us that if a "Licensee" remains a viable entity NRC does not need to become involved in the site's remediation as a matter of the decommissioning of a facility, but rather as a matter of an enforcement activity. It also seems clear that if a "Licensee" is not a viable entity and there are other parties that are responsible for a facility's contamination, the NRC should be granted authority to seek funding from those parties.

The most beneficial question that the NRC could establish an answer for is "What is meant by the term 'Clean'?". We believe the NRC could serve the public, the Agreement States, the DOE, and all other interested parties, as well as themselves, better by proposing or establishing definite levels below which regulatory concern is not warranted. This would allow the "Licensee" and the public to know the standards which must be met in order to decommission a facility. This "Clean" policy would also allow for certain sites, currently requiring extensive decommissioning plans, to become less of a burden on the existing NRC resources.