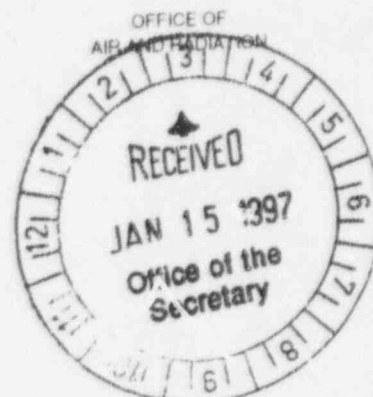




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 14 1997

Malcom R. Knapp, Ph.D.
Deputy Director
Office of Nuclear Materials Safety and Safeguards
U.S. Nuclear Regulatory Commission
Mail Stop T-8A23
Washington, DC 20555



Dear Dr. Knapp:

Enclosed are the Environmental Protection Agency's (EPA) comments on the Nuclear Regulatory Commission's (NRC) Strategic Assessment Initiative. EPA greatly appreciates the opportunity to comment on this document and applauds the NRC's efforts.

We acknowledge the great deal of time and thoughtfulness that the NRC has put into this effort and hope that the Commission will find our comments useful. We have focused our comments on those Direction Setting Issue Papers of greatest interest and concern to the Agency. If you have any questions, please call me at (202) 233-9320.

Sincerely,

E. Ramona Trovato

fr E. Ramona Trovato, Director
Office of Radiation and Indoor Air

Enclosure

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EPA COMMENTS ON THE NUCLEAR REGULATORY COMMISSION'S STRATEGIC ASSESSMENT INITIATIVE

EPA greatly appreciates the opportunity to comment on this document and applauds the Commission's efforts. EPA has only commented the Direction Setting Issue Papers where it believes its comments can be most useful.

DSI 2: OVERSIGHT OF THE DEPARTMENT OF ENERGY

EPA Comment:

EPA believes that the best way to regulate the Department of Energy (DOE) is for NRC to ultimately regulate DOE's nuclear facilities for safety while EPA is responsible for regulation of all environmental hazards including radionuclides. This would result in the most efficient and consistent regulation since EPA is already responsible for regulating the chemical environmental hazards at DOE facilities.

DSI 4: NRC'S RELATIONSHIP WITH AGREEMENT STATES

EPA Comments:

OPTION 1: This is EPA's preferred option provided that the Agency receives appropriate resources. EPA believes that this option would prevent duplication of effort and provide increased efficiency, since many NRC licensees are currently regulated by EPA under Clean Air Act, Clean Water Act, etc.. This can create complications since two Federal agencies are operating in overlapping areas. It is much easier for EPA, which already has experience in regulating radiation, to regulate the NRC licensees for radiation than for NRC, which has no experience in regulating chemicals hazards, to regulate these facilities for chemicals.

If EPA were given this authority it would be able to combine regulatory treatment of radiation on a media by media basis with any regulation of chemicals. In this way facilities would only have to deal with one entity for all its waste issues, water issues and so on.

OPTION 2: EPA has no comments on this option.

OPTION 3: If NRC does not go with Option 1, EPA would support this option in the alternative, since we have found in the rescission of the radionuclide NESHAP for non-reactor NRC-licensees (Subpart I) for non-reactors that NRC current program provides the needed ample margin of safety.

OPTION 4: EPA has no comments on this option.

OPTION 5: EPA has a major concern with this option. In EPA's recently completed rescission of Subpart I, EPA was required to find that the program of NRC and the Agreement States was sufficiently protective. If this option were selected and the Agreement States could have varying degrees of protection, there would no longer be any guarantee that NRC's program would be adopted by the States. This could cause EPA to consider, or to be compelled by to consider reinstating Subpart I.

DSI 5: LOW LEVEL WASTE

EPA Comments:

OPTION 1: EPA strongly opposes this option. An option that would consider the NRC as "strong advocate for new disposal capacity" is inconsistent with NRC role as regulator and not a promoter of nuclear energy. Having NRC adopt the role of strong "advocate" would also be counter to the original rationale for the creation of NRC. Congress created the NRC to regulate commercial nuclear applications and the Energy Research and Development Administration, which later became DOE, to be the developer, or advocate, of nuclear energy. To this day, DOE still carries out a program to perform research and provide technical assistance to the States in their efforts to develop commercial LLW disposal sites. NRC should not retreat from its original role especially in light of NRC's recognition that the objectives of the Low-Level Radioactive Waste Policy Amendments Act of 1985 have been achieved. NRC further acknowledges in Option 4 that there is "no urgency" to developing new disposal capacity.

OPTION 2-4: EPA has no comments on these options.

OPTION 5: This is EPA's preferred option provided that the necessary resources are also made available to the Agency to carry out this mission. EPA has the ability to work with the states to ensure the safe disposal of LLW. EPA's believes this transfer would ensure that the public is provided the same level of protection from radiation as from chemical hazards.

OPTION 6: EPA continues to support the long term disposal of radioactive materials. In practice the use of assured long-term storage can potentially detract from those things that ensure the long term isolation of radioactive waste from the public and the environment such as site characteristics and engineered barriers. While long-term storage may enhance public confidence, it should only be used to provide additional assurance beyond that gained through siting for the safe disposal of radioactive materials. Site characteristics should not become irrelevant, engineered barriers should maintain some degree of importance, and institutional controls should not become the cornerstone of protection.

DSI 5: HIGH LEVEL WASTE

EPA Comments:

OPTION 1: This option contains a number of proposals which require separate comments:

NRC advocates geologic disposal - EPA has no objection to this option provided that advocacy for geologic disposal as a method of dealing with the nation's High Level Waste is separate from advocacy of Yucca Mountain as a disposal site. NRC can not be a credible regulator and an advocate at the same time.

Creation of a "quasi-Government agency" - Establishment of a "quasi-Government agency" in place of DOE runs counter to present efforts to streamline government functions. Will this new agency be in addition to the existing DOE program? If not, won't the same people be doing the same job but merely change their organizational title? EPA does not see how merely changing organization structure will this engender trust and enhance Federal credibility.

NRC certification of repository - EPA believes that this option is worthy of further consideration by NRC. EPA is using a rulemaking process to determine whether to approve opening of the Waste Isolation Pilot Plant (WIPP). We believe that while the existing NRC process has its advantages, other methods of licensing or certification can also be useful and protective. EPA cautions NRC to ensure that any changes made to the process continue to guarantee that opportunities for real and substantive public input are provided and that any decisions made are based on an full administrative record subject to judicial review.

Congressional determination of acceptability of Yucca Mountain - Any proposal that would have Congress determine the acceptability of Yucca Mountain "by law" runs exactly counter to open public discourse and rulemaking, as recommended by the Congressionally mandated Committee on Technical Bases for Yucca Mountain Standards under the Energy Policy Act. Science and not politics should be used as the basis for the decision. Congressional action will only serve to eliminate any chance of developing public trust or confidence in the safety of High Level Waste disposal. If NRC believes that it can not make a decision whether to license Yucca Mountain in a reasonable period of time then it should support the transfer of that function to EPA. EPA believes that it can use the process it is currently using to determine whether to certify the WIPP to determine whether to license Yucca Mountain in a manner that will engender public trust and credibility and to protect both current and future generations.

OPTION 2: EPA supports NRC's efforts to streamline and improve the licensing process. EPA has comments on two specific proposals:

Establishment of a formal issue resolution process - Establishment of a formal, binding issue resolution process during the pre-licensing phase will only work if all affected parties are allowed complete access to such a process, including the right to, at some point, challenge decisions made in court, unless the parties themselves agree to waive that right.

Designation of DOE employees as NRC representatives - Designating DOE employees (or contractors) as NRC "representatives" only raises questions of conflict of interest and gives rise to perceptions of an incestuous regulatory relationship. Any augmentation of NRC staff may very well be offset by added effort to assure the integrity of what could be an awkward arrangement.

OPTIONS 3,4,5 EPA has no comments on these options.

DSI 7: MATERIALS/MEDICAL OVERSIGHT

EPA Comments:

OPTION 1: EPA has no comment on this option.

OPTION 2: EPA supports this option standing alone, since the current NRC program is the basis for our rescission of Subpart I and this option is consistent with the rescission.

OPTION 3: EPA agrees that regulation should be discontinued in areas where it is no longer justified. EPA cautions that the NRC must be careful to ensure that the definition of low risk activities that are unregulated only incorporates truly very low risks. Any determination of very low risk should include an analysis of worst case and accident scenarios, effect of multiple deregulatory decisions and potential cumulative effects to future generations.

OPTION 4,5: EPA has a major concern with these options. In EPA's recently completed rescission of Subpart I, EPA was required to find that NRC's program was sufficiently protective. If this option were selected and EPA was not selected as the Agency to regulate these licensees (EPA would be an appropriate Agency to serve as lead federal agency if EPA received appropriate resources), some other mechanism would have to be in place to ensure that air emissions remain sufficiently protective of public health.

DSI 9: DECOMMISSIONING OF NON-REACTOR FACILITIES

EPA Comments:

OPTION 1: EPA believes this is an acceptable option

OPTION 2: EPA has no comments on this option.

OPTION 3: EPA strongly opposes this option and believes that it would not be sufficiently protective of public health.

OPTION 4: EPA supports the use of the Superfund approach including the use of the Superfund risk range and ground water protection policies.

OPTION 5: EPA supports this option provided sufficient resources are provided to the Agency.

OPTION 6: EPA opposes this option as a piecemeal approach to the problem. If NRC can not assure the clean up of sites it should support option 5 and transfer the entire program to EPA. EPA is also concerned about the potential for an excessive use of the Superfund by an industry that does not contribute to it.

OPTION 7, 8,9 EPA has no comment on these options.