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November 21, 1996

John C. Hoyle
Secretary of the Commission
Nuclear Regulatory Commission
ATTN: Chief of Docketing and Services Branch
Washington, DC 20555-0001

Dear Mr. Hoyle:

We have reviewed several of the Strategic Assessment Issue Papers and have prepared comments on individual issue papers. These papers are enclosed. We also support the comments of the Organization of Agreement States regarding all issue papers. Thank you for the opportunity to comment on these important direction-setting issues for NRC. The extension to the comment period was also appreciated. If you have questions, do not hesitate to contact me.

Sincerely,

William J. Sinclair, Director
Division of Radiation Control

c: Dianne Nielson, Ph.D., Executive Director, UDEQ
Bob Quillin, Chairman, Organization of Agreement States

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STRATEGIC ASSESSMENT ISSUE PAPER

DSI 5 - LOW-LEVEL WASTE

STATE OF UTAH COMMENTS

The basic question asked by NRC was: "What should be the role and scope of NRC's low-level radioactive waste program?"

Option 1: Assume a Greater Leadership Role

This would have NRC becoming a strong advocate for new disposal capacity. This approach is a "day late and a dollar short". The development of new disposal capacity is progressing under the Low Level Waste Act Policy Amendments (LLRWPA) and through efforts of the private sector. The issue paper correctly points to the problems of the California Ward Valley site but fails to recognize that the solution to opening of the site is more of a political rather than solving a particular technical issue. NRC, as a regulator, needs to distance itself from actively promoting any site. Therefore, NRC should not be an active promoter of disposal capacity, that process will take care of itself through states and private sector efforts.

Option 2: Assume a Strong Regulatory Role in the National LLW program

Utah is opposed to NRC assuming a stronger regulatory role in the national LLW program. Under this option, NRC staff would perform a wide variety of technical and regulatory functions to further the development of new facilities and develop new technologies. If this is to come to fruition, NRC would need to hire state staff who have conducted all the licensing and regulatory functions at existing LLW sites to date in order to have any "core expertise" available for this stronger role. It is also optimistic to assume that the NRC has staff expertise in the development of new technologies. This is a role assumed by the private sector and not a role for government. Current federal government initiatives which promote downsizing and delegation to states should be followed since states regulating LLW sites, including Utah, are doing an excellent job in protecting the public and ensuring safety of the sites.

Option 3: Retain current program

In a letter of December 28, 1995 to James Kennedy of the NRC Low-Level Waste program, Utah reviewed several proposed options relating to the status of the national low-level waste program. Utah, as a state that has licensed a low-level site, supported continuation of a baseline program. It was obvious that licensing would be limited or non-existent for the NRC staff but a core staff could provide some necessary services. Technical assistance to states with low-level sites is an important function. Many times there are technical issues that need an independent verification or regulatory issues needing interpretation that a core group would be of assistance.

Another important aspect is the oversight role of NRC in ensuring that low-level waste programs of the states are adequate and compatible. Even though, states often complain about the oversight process, a review and verification by NRC that the low-level waste program is operating in a satisfactory manner is an important function. The state review process often provides improvement opportunities for our program and the low-level waste site that is being regulated. In addition to the oversight role, the need for communication between Agreement States, site operators, and NRC is facilitated by annual conferences and workshops developed by the NRC low-level staff. Without that core group, that communication on national low-level waste issues will be diminished. Finally, a core group can address many of the issues of consistency at the national level including the importance of working with other federal agencies that have similar issues of concern.

Option 4: Recognize Progress and Reduce Program

There is recognition that progress has and is being made in the low-level waste facility siting effort. Utah recognizes that our dealings with a low-level waste (and other radioactive wastes) site since 1988 has provided us with a comfort level that decisions relating to low-level and other wastes at the Utah site have and will continue to be valid. In many cases, we would see ourselves as a resource to the national low-level waste program, in some cases we appreciate the validation of our efforts by the national low-level waste program. There has been a reduction earlier to a "base or core" level program, what would be the impact of further reductions. This would be a key question to answer. Utah feels that some "core" level is essential but cannot discern what the full time equivalent position (FTE) numbers should be for the NRC national low-level waste program. In the worst case scenario, Utah could survive without a national low-level waste program.

Option 5: Transfer LLW Program to EPA

Utah believes this option is one that cannot be seriously considered. Utah recognizes that certain expertise rests within EPA in the waste management area and similar experiences exists in the siting and regulation of waste management facilities. However, EPA waste disposal rules are very prescriptive as compared to NRC's performance-based approach. This prescriptive nature, while designed to be preventative in nature, is often a regulators nightmare and a waste facility

albatross. Utah's experience with dual regulation of a mixed waste facility enforces this perception. It is highly unlikely that this option could be timely based on strictly the needed legislative fixes.

Option 6: Accept Assured Long-Term Storage

Utah does not favor storage of waste of any type for any long period of time without the proper institution controls. The assured storage concept relies on above ground concrete bunkers to "permanently" store waste until a safer technology than shallow land burial is developed. Many issues would have to be resolved before the public could feel "good" about this option. The argument that assured long term storage facilities are really disposal facilities of a different type would be most difficult to overcome. A prime example of assured long term storage is the high level waste program and the Monitored Retrievable Storage program which has been a dismal failure.

In conclusion, Utah:

- (1) strongly disagrees with the Commission's preferred option of assuming a strong regulatory role in the national low-level waste program. Does this send a message of concern that states with sites are not adequately protecting the public?
- (2) supports something between Options 3 and 4. In fact, we had perceived this issue was settled after input into SECY 95-201 and were surprised by the Commission's apparent reversal of a previous policy decision;
- (3) encourages NRC to maximize partnering opportunities with states that have existing sites as a benefit for both agencies;
- (4) submits that NRC should stay out of the siting process and concentrate its effort on the regulatory process; and
- (5) is disappointed that NRC did not consider all issues of waste management. Significant issues and differences of opinion exist in the uranium recovery area yet the program was not mentioned as an issue.

As support to conclusion (5), the following additional information is provided:

The low-level waste paper did not focus on any issues relating to the management of the uranium recovery program. Yet, in the view of the State of Utah, several significant areas of regulatory concern exist that are not being addressed. Some of the issues include:

(1) Inadequate reclamation bonds and no regulatory mechanism to require a holder of an inadequate bond to fully fund decommissioning without the necessary approved reclamation plan.

(2) Allowing uranium facilities to remain in stand-by status for long periods of time without "stand-by" requirements that would facilitate upgrades of equipment or facilities to meet best available technology if production appears to be imminent; also no time frame that requires a mill to begin decommissioning, therefore a mill can remain on stand-by for an indefinite period of time.

(3) Dual regulation of groundwater has been a Utah concern. The State of Utah has jurisdiction, if they wish to impose it, on non-radiologic parameters in groundwater beneath uranium mill facilities. NRC has been constrained by regulatory processes which would allow the concerns of the state to be addressed in the groundwater area. Some of the perceived weaknesses in the NRC program include the inability to enforce surface water standards and address off-site releases. Additionally, there has been no follow-up groundwater constituent sampling to confirm additional constituents that might be less mobile in the waste. NRC also have federal law constraints that would allow licensees to voluntarily add conditions to satisfy state concerns (such as additional parameter monitoring).

(4) Some gaps exist in the allowing the storage of "alternate feed materials" containing liquids at uranium mills without necessary secondary containment. Routine inspections of containerized waste are not required which could allow containerized waste to deteriorate and contents to leak/spill (this applies to both liquid and solid wastes).

Just recently, at the November 1996 Uranium Recovery Workshop, indications were that NRC had made significant progress in addressing the issue of constituent sampling and had prepared an options paper for consideration by the Commission. The preferred option was to regard uranium mill licensees to sample prior to termination of the license. Utah prefers that the option regarding "routine" monitoring for constituents should be instituted. Whatever the final decision is by the Commission, Utah wishes to commend the efforts of the NRC to try to resolve some of these difficult issues. Another issue that NRC recently resolved by the issuance of regulatory guidance was the use of alternate feed materials at mills. This ensured that "sham disposal" would not occur at the mills.

Response to question regarding unauthorized disposal:

A major concern regarding unauthorized disposal relates to licensees termed as "brokers" who arrange for disposal services for generators. Currently, no requirement exists for financial assurance for these licensees. As such, there is the possibility that a broker might assemble a large amount of waste on-site and "go out of business" leaving the following possibilities: (1) the waste remains at the broker's site for a significant period of time until disposal arrangements can be made by the following: (a) Generators come and pick up their waste (b) the state or

federal government performs the clean-up and tries to cost recover.

An adequate financial mechanism would allow the state or federal government to hire a third party contractor to clean up the site. NRC could also establish a "clean-up" fund similar to EPA's CERCLA emergency response monies for radioactive waste abandonment clean-ups or enter into a Memorandum of Agreement with EPA to take care of the few radioactive waste clean-ups. Illegal disposal of radioactive waste does not seem to be as big an issue as other waste (such as RCRA hazardous waste). Other considerations include the loss of control of industrial radiography cameras and moisture density gauges.

Submitted by:

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