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Working Group



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Division of Radiological Health
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OSP

November 7, 1996

Page 1 of 2 Pages

Office of State Programs
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 SP-96-095 that transmitted the document entitled "Report of the Joint NRC-Agreement State Working Group for Development of Implementing Procedures for the Final Policy Statement on Adequacy and Compatibility of Agreement State Programs" dated August 21, 1996. As a result of this review the Division has the following comments.

- The term "national interest" should be clearly defined. A list of possible circumstances that would warrant the incorporation of this item in a compatibility review would be helpful.
- The compatibility component that requires Agreement States to adopt regulations to implement federal mandates such as the Clean Air Act appears to be a candidate for "alternative legally binding requirements." An Agreement State should be given the opportunity to demonstrate to the satisfaction of the U.S. Nuclear Regulatory Commission (NRC) that the requirements of the federal mandate have been adopted and are legally binding by a method other than a state regulation specific to radiation protection. The Agreement State could be responsible for adopting the federal mandate without the added "requirement" of the NRC. The decision from the U.S. Office of General Counsel concerning other acceptable forms of a legally binding requirement is of great interest to the State of Tennessee.

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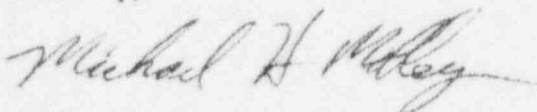
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Richard L. Bangart, Director
November 8, 1996
Page 2 of 2 Pages

- The Working Group's assessment concerning the proposed IMPEP review process for "Regulations Required for Purposes of Health and Safety" initially appears to be an acknowledgment of the difficulties many states have in adopting new regulations in today's political climate. However, the proposed IMPEP procedures should not be so subjective and broad that sufficient justification could be put forth by both the NRC and the Agreement State to support a finding of either "satisfactory" or "unsatisfactory."
- The underlying theme throughout this report is its heavy emphasis on compatibility with the NRC. We recognize the need and the importance of "an orderly pattern in the regulation of agreement materials on a national basis." We, also, believe that compatibility among the individual states should be emphasized, not merely to demonstrate compliance with management or policy directives, or form over substance, but for radiation safety protection. Therefore, the Division would respectfully request that the main emphasis of the IMPEP reviews of the Agreement States be concentrated on the protection of radiation workers, the public, and the environment from the harmful effects of radiation, and not the production of cloned radiation safety programs in the NRC's own image.
- Finally, any discussion of the compatibility of the regulation of Atomic Energy Act radioactive material on the national level must address the dismal performance and continuation of the "self-regulating" activities of the Department of Energy.
- The Working Group should be commended for proposing that the NRC assign a "compatibility or health and safety component" for each draft rulemaking plan when it is provided to Agreement States for comment. The implementation of this proposal should facilitate an active discussion between the NRC and the Agreement States on draft rulemaking, and in addition promote the participatory rulemaking process.

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



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Date : 11/08/1996

Time : 11:50:00

FAX COVER SHEET

Page 1 of 3 Pages

To: U.S. NRC / State Agreements

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From: Michael H. Mobley, Director
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If you do not receive all 3 pages, please
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