

September 17, 2008

Patricia Gardner, Manager
Bureau of Environmental Radiation
New Jersey Department of Environmental Protection
P.O. Box 415
Trenton, NJ 08625-0415

Dear Ms. Gardner:

We have reviewed the New Jersey Department of Environmental Protection (DEP) response, dated July 30, 2008, submitted in response to our comments on our review of New Jersey's "Radiation Protection Act" contained in New Jersey Statute 26:2D. These comments were submitted to you by letter dated August 9, 2006.

Based on our review, it appears that DEP has adequately addressed our comments with one exception discussed below. We noted that in your response, additional New Jersey Statutes were referenced in addition to the New Jersey Statute 26:2D. Statutes and Code that were referenced include New Jersey Statutes 7, 13, 52, 58, and the NJDEP Ethics Code. These additional statutes should be included in your application for an Agreement State program. If there are other statutes and codes that were used to support the legislative authority of the New Jersey Radiation Protection Act, please include copies of those as well.

With regards to your response to Question 8 which addresses low-level radioactive waste authority and land ownership restrictions, we recognize that, based on your response, New Jersey may not need to implement any such authority for over 30 years. However, we must ensure that New Jersey has statutory authority to carry out its responsibilities under the proposed Agreement with NRC at the time the Agreement is signed. Your response does not address this issue. As noted in your other responses, New Jersey does have significant flexibility to adopt regulatory requirements not specifically stated in statute that are necessary for implementation of your health and safety mandate. If New Jersey believes that it has the ability to implement this authority through rule adoption, then it may not require a statutory change. The rule adoption or statutory change would need to address the appropriate restrictions necessary for land ownership and use of sites used for disposal of low-level radioactive waste for an indefinite period after closure of the site.

If you have any questions, please contact me or Torre Taylor at 301-415-7900 or by e-mail at torre.taylor@nrc.gov.

Sincerely,

/RA TReis for/

Robert J. Lewis, Director
Division of Materials Safety and State Agreements
Office of Federal and State Agreements
and Environmental Management Programs

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