

January 5, 2001

Mr. David J. Allard, Director
Bureau of Radiation Protection
Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 8469
Harrisburg, PA 17105-8469

Dear Mr. Allard:

We have reviewed the proposed regulations for the Radiological Health chapters (Chapters 215, 217, 219, 220, 224, 225, 226, 230, and 232) in Pennsylvania Code Title 25 (Environmental Protection) published in the *Pennsylvania Bulletin* on August 26, 2000. They were submitted in your November 14, 2000 letter. The proposed regulations are in preparation for the Commonwealth's request to become an Agreement State. The regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150.

As a result of our review, we have no additional comments beyond those based on the review of your draft proposed regulations and the understandings reached during discussions with your staff regarding these comments documented in our April 14, 1999 letter to you (Enclosure). These comments include duplicate definitions in Chapter 215 (entrance or access point, ionizing radiation, worker and person), the incorporation by reference of requirements reserved for the NRC, the definition of person in Chapter 236, and the omission of a paragraph on bankruptcy in Paragraph 236.226. We would appreciate your confirmation on the issues addressed in the April 14, 1999 letter as we discussed with Mr. Ray Urciuolo on January 2, 2001.

Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, a finding that a State regulation meets the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final State regulation. However, we have determined that if your proposed regulations were adopted without significant change, and addressed the issues identified above, they would meet the compatibility and health and safety categories established in Office of State and Tribal Programs (STP) Procedure SA-200.

We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in STP Procedure SA-201, *Review of State Regulations*, please highlight the final changes and send one copy in a computer readable format, if possible.

David J. Allard

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January 5, 2001

If you have any questions regarding the comments, the compatibility and health categories, or any of the NRC regulations used in the review, please contact me or Duncan White at (610) 337-5042 or ADW@NRC.GOV.

Sincerely,

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

Enclosure:
As stated

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Response to Incoming: ML003770878

DOCUMENT NAME: G:\SNS\Pennsylvania\Proposed regsR.wpd

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STP-NA-17

April 14, 1999

David J. Allard, Director
Bureau of Radiation Protection
Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 8469
Harrisburg, PA 17105-8469

Dear Mr. Allard:

This letter provides the results of the U.S. Nuclear Regulatory Commission (NRC) staff review of the draft Pennsylvania regulations that will be needed to support your request for an Agreement as explained in Stuart R. Levin's letter dated February 24, 1999. The review covered the draft regulations in Title 25, Environmental Protection, Chapters 215-232, dated December 3, 1998 and November 12, 1998; the final regulations in Chapters 215-219, Volume 1, December 1998; Chapter 220, October 17, 1998; Chapters 221-230, Volume 2, December 1998; and the final regulations in Chapters 236 (November 23, 1996) and 237 (December 21, 1996). The review also covered the supplement regarding Section 217.200 dated March 9, 1999. The draft and final regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71 and 150. We also reviewed the responses to our letter dated July 30, 1998, that are attached to Mr. Levin's letter.

As a result of our review, we have three comments that are identified in the enclosure. We would appreciate your response to the comments. The comments are based on the compatibility and health and safety categories contained in OSP Procedure SA-200, Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements.

The review followed OSP Procedure SA-201, Review of State Regulations (November 10, 1998). We request that when the proposed regulations are published for public comment, a copy of the "as published" regulations be provided to us for review. As requested in OSP Procedure SA-201, please highlight any changes and send one copy in a computer readable format, if possible.

If you have any questions regarding the comments, the compatibility and health and safety categories, or any of the NRC regulations needed for compatibility and health and safety, please contact me or Dr. Stephen N. Salomon of my staff at (301) 415-2368 or E-mail: SNS@NRC.GOV.

Sincerely,

/RA/

Paul H. Lohaus, Director
Office of State Programs

Enclosure:
As stated

**Comments on Proposed and Final Pennsylvania Regulations
Against Compatibility and Health and Safety Categories**

<u>Category</u>	<u>State Regulation</u>	<u>NRC Regulation</u>	<u>Subject and Comments</u>
<u>Comment #1</u>			
	Chapter 215		General Provisions
	215.2		Definitions
C		20.1003	Entrance or access point
A		20.1003	Ionizing radiation
C		19.3	Worker
			We bring to your attention that these definitions appear to be duplicative to some extent of the definitions that are incorporated by reference in 10 CFR Parts 19 and 20. We suggest you consider their deletion.
C		150.3(g)	Person
			The definition of person meets the essential objectives. However, see Comment # 3.
<u>Comment #2</u>			
	Chapter 217		Licensing of Radioactive Material
NRC	Subchapter B	30	General Provisions for Radioactive Material
NRC	Subchapter D	32	Specific Licenses to Manufacture or Transfer Certain Items Containing Radioactive Material
NRC	Subchapter G	40	Licensing of Source Material
NRC	Subchapter H	70	Licensing of Special Nuclear Material
NRC	Subchapter J	150.20	Reciprocity
NRC	Chapter 230	71	Packaging and Transportation of Radioactive Materials
			There are provisions in 10 CFR Parts 30, 32, 40, 70, 71 and 150.20, which Pennsylvania has incorporated by reference, that are reserved to NRC. (These provisions, are identified by the "NRC" category in OSP Procedure SA-200.) We conclude, however, that the standard language in 215.1(f) is sufficient to address the incorporation by reference of provisions reserved to NRC. Section 215.1(f) provides that, "If a provision of the Code of Federal Regulations incorporated by reference in this article is beyond the scope of authority granted the department under statute, or is in excess of

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<u>Category</u>	<u>State Regulation</u>	<u>NRC Regulation</u>	<u>Subject and Comments</u>
			the statutory authority, the provision shall be and remain effective only to the extent authorized by Pennsylvania law. We would appreciate confirmation to that effect.
<u>Comment # 3</u>			
	Chapter 236	61	Low-Level Radioactive Waste
	236.2	61.2	Definitions
[C]			Person
			As noted in our letter dated July 30, 1998, the definition of "person" appears to be inconsistent in that paragraph (i) refers to a definition in Section 215.2 that conflicts with paragraph (ii). Paragraph (ii) includes all agencies of the Federal government other than the NRC whereas paragraph (i) excludes Federal government agencies. We notice that definition (ii) of person appears in the Low-Level Waste Disposal Act (Act 1988-12), Section 103. Definitions. However, we understand that definition (ii) allows Federal agencies to dispose of low-level radioactive waste in the disposal facility. The first definition of person applies to regulatory actions and excludes Federal agencies. This interpretation is consistent with Section 102. Legislative findings, (Act 1988-12) that states, "It is the purpose of this act to:.... (2) Establish and maintain, to the extent allowable under Federal law, a comprehensive and pervasive low-level waste disposal management, licensing and regulatory program in the Department of Environmental Resources..." and is in agreement with the proposed Pennsylvania Agreement in which the State does not have regulatory jurisdiction over Federal agencies. We would appreciate confirmation of this interpretation.

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Against Compatibility and Health and Safety Categories**

<u>Category</u>	<u>State Regulation</u>	<u>NRC Regulation</u>	<u>Subject and Comments</u>
<u>Comment #4</u>			
H&S	236.226	61.24(k)(1)	<p>Conditions of the license.</p> <p>Paragraph 236.226 omits a paragraph on bankruptcy from the regulation, Bankruptcy Filing; Notification Requirements, 52 FR 1292, January 12, 1987 effective February 11, 1987. Such a paragraph should be added to meet the compatibility category.</p> <p>However, Response #9 in Mr. Levin's February 24, 1999 letter says that the omission can be corrected by license condition because it is unique to the low-level radioactive waste site. We need assurance that this license condition can be instituted as a legally binding requirement (i.e., license conditions are permitted by the State's administrative procedures and are legally binding). Also, you must submit the license condition for review.</p>