

# STATE OF COLORADO

Bill Owens, Governor  
Jane E. Norton, Executive Director

*Dedicated to protecting and improving the health and environment of the people of Colorado*

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Colorado Department  
of Public Health  
and Environment

June 6, 2001

Paul Lohaus, Director  
Office of State and Tribal Programs  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

**RE: DELIBERATE MISCONDUCT**

Dear Mr. Lohaus:

On January 19, 2001, Colorado sent you a letter stating we believed the essential objectives of the Deliberate Misconduct Rule was met without amending our regulations. On April 24, 2001, I met with James Lieberman, Stephen Salomon, Vivian Campbell, Cardelia Maupin, and Kathleen Schneider to discuss the letter and Colorado's statutes.

During the meeting, I was asked to provide further clarification as to whether Colorado could take action to prevent an individual from using radioactive materials. It is the opinion of our attorney that we can take such actions. Enclosed is a Memorandum to that effect.

I trust this information will permit NRC to determine that Colorado has met the essential objectives of the Deliberate Misconduct Rule.

If you have any questions, please contact me at (303) 692-3036.

W. Jacobi, Program Manager  
Radiation Services

Enclosures: as stated

Cc: Vivian Campbell

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May 29, 2001

**M E M O R A N D U M**

**TO:** Jake Jacobi  
Laboratory and Radiation Services Division

**FROM:** Jerry W. Goad   
Senior Assistant Attorney General  
Natural Resources and Environment Section

**RE:** Authorized Users of Radioactive Materials

This is in response to your request for my views on whether your Division could prohibit a specific person from using radioactive materials.

Assuming that there is a valid basis for wanting to preclude someone from becoming an authorized user, e.g., deliberate misconduct, supplying false information, etc; I believe that your Division would have the authority to order a licensee to not allow a specific person to use radioactive materials.

The statute directs the Division to issue licenses, administer the radiation program, etc; in accordance with regulations promulgated by the Board of Health. Those regulations give the Department broad authority to "...by order...impose...any additional requirements as [the Department] deems appropriate or necessary to minimize danger to the public health and safety. RH 1.9. The licensing regulations have similar provisions. RH 3.14.2 and RH 3.15.1. Thus, if the Department reasonably believes it necessary to minimize danger to public health and safety, I believe it could issue such an order.

This opinion is my own and does not necessarily reflect the opinion of the Attorney General.

