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January 10, 2002

Paul H. Lohaus
Director
Office of State and Tribal Programs
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Lohaus,

I am writing you in response to a letter dated December 11, 2001 signed by Frederick C. Combs of your office. The letter contained United States Nuclear Regulatory Commission, USNRC, comments on Ohio rule 3701:1-46, which is Ohio's version of 10 CFR 31 and 32.

The letter contains a number of comments concerning the compatibility to USNRC regulations of Ohio rules 3701:1-46-13 through 29 (10 CFR 32 Subpart A), which deal with exempt concentrations and items. The comments and Ohio's response are outlined below:

1. Rule 46-13 - (32.11), 46-14 - (32.12), and 46-15 - (32.13)

NRC's comment - The regulation title is missing the word "byproduct." "...and transfer of ownership or possession of byproduct, accelerator produced material or..."

Ohio's response - The above referenced NRC regulations do not contain the word byproduct in this section of the title. Ohio added accelerator produced material or radium and purposely left out byproduct in order to clarify that Ohio was not licensing the transfer of exempt concentrations of byproduct material. This is reserved to the USNRC in 10 CFR 150.15(a)(6).

We ask that the NRC delete this comment.

2. Rule 46-13 - (32.11)

NRC's comment - Paragraph C is added. Paragraph C refers to exempt licensing which is reserved to the NRC.

Ohio's response - The purpose of paragraph C is to emphasize that the transfer of byproduct material to persons exempt from licensing must be done in accordance with a USNRC license. We feel that emphasizing this issue clarifies and in no way detracts from the rule.

We ask that the NRC delete this comment.

3. Rule 46-16 - (32.14), 46-17 - (32.15), 46-18 - (32.16), 46-20 - (32.18), 46-21 - (32.19), 46-22 - (32.20), 46-23 - (32.21), 46-24 - (32.21a), 46-25 - (32.22), 46-26 - (32.23), 46-27 - (32.26), 46-28 - (32.27), 46-29 - (32.40)

NRC's comment – This regulation should be deleted to meet the NRC Compatibility Category.

Ohio's response – Ohio understands that the NRC reserves the authority to regulate the transfer of byproduct material to persons exempt from licensing (10 CFR 150.15(a)(6)). We do not understand why the above referenced regulations have a compatibility category of "NRC".

We believe that Ohio needs these rules to effectively regulate the introduction of byproduct and accelerator produced material into products that are then transferred to persons exempt from licensing. The USNRC does not regulate the introduction of byproduct and accelerator produced material into products that are then transferred to persons exempt from licensing or the transfer of accelerator produced material in these products. The USNRC only regulates the transfer of byproduct material in these products to exempt persons.

An example of the problem that we see in this is a licensee that manufactures and distributes smoke detectors containing byproduct material to persons exempt from licensing. They would be licensed by the USNRC to distribute the smoke detectors and licensed by Ohio to manufacture the smoke detectors. Without a rule equivalent to 10 CFR 32.26, how can we adequately regulate the manufacture of this product? The example used is Grinnell Fire Protection Systems Company of Westlake, Ohio. Prior to the Ohio agreement of August 31, 1999, they held two USNRC licenses. A "Manufacturing and Distribution Other" license, # 34-23772-01, and a "Exempt Distribution" license, # 34-23772-02E. The "Manufacturing and Distribution Other" license was transferred to Ohio in August 1999 and the USNRC retained the "Exempt Distribution" license.

Ohio requests the NRC review these rules to determine if they truly need to be deleted to be compatible with NRC regulations. We believe that the compatibility categories assigned to the regulations in 10 CFR 32 Subpart A should not be "NRC" and ask that the NRC re-evaluate the compatibility categories for these regulations. We believe the compatibility level should be "B".

4. Rule 46-31(A)(4) and (B)(3) - (32.51a)

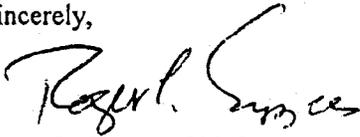
NRC's comment – The qualifier "at the time of the purchase" was added to the disposal information required to be provided to general licensees. This term should be deleted.

Ohio's response – The qualifier was added at the suggestion of interested parties in Ohio and agreed to by the Ohio Radiation Advisory Council's Radioactive Materials Committee. We believe that it clarifies and in no way detracts from the rule. Estimated disposal costs at the time of purchase is the only realistic information that can be given to gauge purchasers. Asking gauge manufacturers to look into the future at disposal cost is unrealistic.

We ask that the NRC delete this comment.

We plan to move forward on the adoption of these rules through the Radioactive Advisory Council and the Public Health Council in the next week. Your immediate attention to this matter is appreciated. All other comments from the December 11, 2001 letter have been incorporated into Chapter 3701:1-46. Please feel free to contact Marcia Howard or myself at 614-644-2727 if there are any questions.

Sincerely,



Roger L. Suppes, Chief
Bureau of Radiation Protection

cc: James L. Lynch, State Agreements Officer
Dennis Sollenberger

STATE OF OHIO
Ohio Department of Health
Bureau of Radiation Protection
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COMMENTS: _____

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