April 9, 2002

Mr. Edgar D. Bailey, C.H.P., Chief
Radiologic Health Branch
Division of Food, Drug & Radiation Safety
California Department of Health Services
P.O. Box 942732, MS-178
Sacramento, CA 94234-7320

Dear Mr. Bailey:

As requested, we have conducted a preliminary review of the four proposed California bills: Senate Bills Nos. 1623, 1444, 2065; and Assembly Bill No. 2214 faxed March 5, 2002.

Our preliminary review of the four bills was conducted within the context of the 1962 Agreement between the State of California and the U.S. Atomic Energy Commission, now the U.S. Nuclear Regulatory Commission (NRC) (27 FR 3864). The Agreement is in accordance with the requirements of Section 274 of the Atomic Energy Act of 1954, as amended (Act). As stated in Article 1, regulatory authority transferred to the State was limited to: (a) byproduct materials as defined in Section 11e.(1); (b) source materials as defined in Section 11z; and (c) special nuclear materials (SNM) (as defined in Section 11aa of the Act) in quantities not sufficient to form a critical mass (as defined in 10 CFR 150.11). Subsequent to entering into the Agreement, the NRC defined several other classes of materials or activities over which California has agreed to assume regulatory authority. These additional classes are: the regulation of the land disposal of byproduct, source, or SNM waste received from other persons; and the evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or SNM and the registration of the sealed sources or devices for distribution. Under Article II, the NRC retains regulatory authority for nuclear power plants, fuel cycle facilities, SNM above formula quantities and certain other matters. Article V states that the State will use its best efforts to maintain continuing compatibility between its program and the program of the Commission for the regulation of like materials. We also recognize California's responsibilities under the Low-Level Radioactive Waste Policy Amendments Act of 1985 (P. L. 99-240) and the Southwestern Low-Level Radioactive Waste Compact (P. L. 100-712).

The four bills address two main areas, the License Termination Rule and Low-Level Waste (LLW) disposal facilities. The criteria for license termination under the Senate draft legislation would be more stringent (nothing above background or 10^{-6} risk) than the NRC criteria. A more stringent criterion is allowed under the relevant compatibility criterion (Criterion C), but only so long as it does not preclude a practice in the National interest. We are concerned that the draft legislation would have such a preclusive effect.

When the NRC established its criteria, the NRC considered the difficulty of implementing more strict criteria. Based on this past effort, it appears that the proposed California criteria will be very difficult to implement (e.g., how is background measured, how is risk converted to radionuclide concentration). If the State were to require potential licensees to maintain a decommissioning fund to support license termination under the criteria in this draft legislation,

the cost burden might preclude other work involving radioactivity regulated under the Atomic Energy Act of 1954, as amended. As an additional consequence, the proposed requirements may have the effect of creating perpetual State licenses for existing facilities because of the cost of decommissioning to background levels. The proposed criteria could also create a disincentive for an existing licensee to spend significant funds for site decommissioning if the end result was a site that still could not achieve the State license termination criteria.

Assembly Bill 2214 contains specific requirements in proposed Section 115261(a) that are not compatible with the NRC requirements, such as a requirement to ensure that no radioactive material will be released into the environment and a requirement that any low-level radioactive waste site licensee provide continual monitoring and repackaging of materials to prevent release. Proposed Section 115261 has a list of design and operational requirements that are in addition to the requirements equivalent to 10 CFR Part 61. These proposed requirements appear to define a LLW storage facility, not a disposal facility. If these proposed State requirements are design and operational, then the NRC would find them within the scope of the State's authority. If the State's intent is to set a "no release" standard and require continued monitoring of waste containers after disposal, then the bill would put the State in the position of promulgating requirements that are incompatible with those of NRC under the Agreement.

We appreciate your providing us the opportunity to review and comment on these proposed legislative changes.

Sincerely,

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

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