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Subject: California Court Decision on California's D&D Regulations

Yesterday morning we learned that we had lost the lawsuit against us regarding our adoption of the D&D regulations. Attached below is a copy of the court decision setting aside the D&D regulations. The decision did not address the 25 millirems per limit per sec, but rather based its decision on findings that the Department did not comply with the California Environmental Quality Act (CEQA) and the Administrative Procedures Act (APA) in adopting the regulations.

The actual Writ of Mandate has not been issued yet so that the extent of this decision is not fully known. That is, we do not know if the court will set aside only the D&D regulation or the entire set of regulations that were in that regulation adoption package. The Writ of Mandate is expected to be issued within a week.

At the present time the Department is considering several options with regard to what we will do in face of this court ruling. I would appreciate the NRC's opinions/responses as to how the implementation of each of these options could/would affect the Agreement State status of California with regard to compatibility and adequacy and possible/potential actions of the NRC based on the selection of a particular option.

Options that might be considered:

1. Appeal the court's decision. This would probably have the effect of setting aside implementation of the court's order until the appeal was settled. It is estimated that the appeal court decision could come in as little as a couple of weeks or that it might be months until an appeal court (if it agreed to take the appeal to begin with) would rule. the decision could go either way.
2. California will conduct a CEQA review and then go through the regulation adoption process following the completion of that review. Optimistically this has been estimated to take at least 18 months. A more realistic guess, I believe, is 36 months.
3. While we are going through the CEQA and regulation adoption process, there are several options under consideration for how we would handle D&D projects, license terminations, and the release of sites/facilities for unrestricted use. These options would remain in effect until such time as a new D&D regulation had been adopted. These options include:
 - a. A reversion to using 100 millirems per year as the site release criteria. (This does not seem to be a real possibility in the present political climate.)
 - b. Institute a total moratorium on the termination of any licenses and the release of any sites/facilities for unrestricted use.

c. Institute a moratorium on the release of any site/facility with any residual radioactive materials above background (zero release limit).

d. Base our releases and terminations of licenses on a case by case decision.

A quick response would be greatly appreciated.

thanks for your help.