

May 10, 2002

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

Dear Mr. Bailey:

This is in response to your April 17, 2002 e-mail regarding the California court's decision on setting aside the D&D regulations (NRC License Termination Rule). You indicated that your Department is considering several options as to what actions it will take until a new D&D regulation is adopted in the absence of a reversal of the court's decision or a stay of its mandate. You further indicated that you would appreciate 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. We have no comments on the first two items and appreciate the information.

Following is our response to the options indicated in item 3:

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.)

Response: This option is not acceptable since the 100 mrem/year release criterion is less restrictive than the current 25 mrem/year limit stated in the License Termination Rule and therefore the use of 100 mrem/year criterion would be precluded by the compatibility policy.

- b. Institute a total moratorium on the termination of any licenses and the release of any sites/facilities for unrestricted use.

Response: This option appears contrary to the compatibility policy in that it precludes a practice in California that's in the National interest, i.e., the ability to terminate a site license.

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

Response: This option would apply a release criterion that is more restrictive than the current 25 mrem/year limit. 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, i.e., the ability to terminate a site license. A zero release limit may not be practicable given the difficulty of removing all radioactivity. We believe that this option, i.e., zero release above background, would have such a preclusive effect, and therefore would be inconsistent with the compatibility criterion.

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

Response: The option would be acceptable provided that you use criteria or guidance under your existing regulations that would provide a level of protection for the public health and safety that is comparable with the level of protection by using the License Termination Rule in reaching the individual licensing decisions.

Sincerely,

/RA by Spiros C. Droggitis for/
Paul H. Lohaus, Director
Office of State and Tribal Programs

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Sincerely,

/RA by Spiros C. Droggitis for/
 Paul H. Lohaus, Director
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