EDO Principal Correspondence Control

FROM:

DUE: 08/22/02

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FINAL REPLY:

William J. Sinclair

Organization of Agreement States

TO:

Paperiello, DEDMRS

FOR SIGNATURE OF :

** GRN **

CRC NO:

Paperiello, DEDMRS

DESC:

ROUTING:

Solicitation of Cooperation from the Executive Board of the Organization of Agreement States (OAS) with NRC to Evaluate Changes to the Current Structure of the Management Review Board (MRB) for State Program Reviews Under the IMPEP

Travers Paperiello Kane Norry Craig

DATE: 08/01/02

Burns Cyr, OGC Virgilio, NMSS

ASSIGNED TO:

CONTACT:

STP

Lohaus

SPECIAL INSTRUCTIONS OR REMARKS:

Templato: EDO-001

ERids: EDO-01



William Sinclair, Chair Pearce O'Kelley, Chair-Elect Kathy Allen, Past Chair Stanley Fitch, Secretary Kenneth Weaver, Secretary-Elect

July 26, 2002

Carl J. Paperiello Deputy Executive Director for Materials. Research, and State Programs **Nuclear Regulatory Commission** Washington, D.C. 20555-0001

Dear Dr. Paperiello:

The Executive Board of the Organization of Agreement States (OAS) would solicit the cooperation of the Nuclear Regulatory Commission (NRC) in evaluating some changes to the current structure of the Management Review Board (MRB) for state program reviews under the Integrated Materials Performance Evaluation Program (IMPEP). The current structure of the MRB consists of four representatives of the NRC and an Agreement State liaison appointed by OAS. The state program review teams are headed by a representative from the NRC Office of State and Tribal Programs (OSTP) who is responsible for ensuring team members properly accomplish assigned tasks. OSTP schedules reviews, assigns team members, prepares necessary paperwork, and presents draft findings to the MRB on state program reviews.

There has been concern expressed that having the Director of OSTP as a member of the MRB appears to be a potential conflict of interest since his office is integrally involved in the formulation of findings and recommendations concerning state program reviews. The Director of OSTP has done a good job in trying to maintain independence, however the perception exists that the Director may always support his staff findings. In close votes, the OSTP MRB member vote could actually be the deciding vote and impact an overall state program review finding with subsequent enhanced oversight of the state program. We suggest that the Director of OSTP be replaced on the MRB with another comparable manager within the NRC ranks to eliminate any perception of a conflict of interest. In the Report of IMPEP Lessons Learned (April 1, 2002), it was suggested that the MRB already has the flexibility to request additional MRB members from other NRC offices as appropriate. We would expect that the Director of OSTP under a new scenario would still attend all state program review meetings and provide input in conjunction with the official OSTP representative.

The second issue relates to the status of the state member of the MRB having voting rights. We appreciate the courtesy extended to the Agreement State Liaisons in soliciting opinion and allowing them to voice either concurrence or disagreement with a recommendation from the IMPEP review team. The report of the Working Group on IMPEP Lessons Learned indicated that the Working Group members requested that the NRC Office of General Counsel (OGC) review current information to determine if there had been a change that would allow Agreement State Liaisons full membership and voting privileges on the MRB. On September 21, 2001, the NRC's OGC responded that there has not been any change in the

Federal Advisory Committee Act (FACA) that would impact the original determination in SECY-95-047 and there was no legal basis to allow Agreement State Liaisons the privilege. The recommendation of the Working Group was that the issue of whether the Agreement State Liaison to the MRB could be a voting member be reconsidered if there are changes to either FACA or from the implementation of recommendations of the National Materials Program Working Group. Members. This continues to be a matter of concern for OAS in terms of recognition of Agreement States as partners and co-regulators with NRC of radioactive material licensees within the United States. We would encourage NRC to (1) continue to extend the courtesy to MRB members to voice concurrence or disagreement with a recommendation (2) to count that concurrence or disagreement in any final disposition of a recommendation (3) examine other options or framework under which a state MRB member with voting rights could function such as legislative changes to FACA.

We appreciate consideration of the above issues. Please do not hesitate to contact me if you have questions.

Sincerely,

William J. Sinclair, Chair

cc: OAS Executive Board (via electronic mail)

Paul Lohaus, Director, NRC Office of State and Tribal Programs