

# OHIO DEPARTMENT OF HEALTH

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September 23, 2002

Paul Lohaus  
Director Office of State and Tribal Programs  
US Nuclear Regulatory Commission  
Washington, DC 20585

Dear Mr. Lohaus:

On September 5, members of my staff met with representatives of NRC. The purpose of the meeting was to conduct the interim review of Ohio's IMPEP report. An issue that arose at the meeting was NRC's change of compatibility regarding 10CFR 71.10(b) and 10CFR 71.10(c). The compatibility for these rules was changed from compatibility level "B" to "NRC only".

Ohio adopted an Ohio version of 10 CFR 71 as Chapter 3701:1-50 of the Ohio Administrative Code. Ohio proposed to adopt the exemption that is provided in 10CFR 71.10(b) and 10 CFR 71.10(c). When NRC reviewed Ohio's proposed rules in Chapter 3701:1-50, the Bureau was advised that the compatibility for these two parts of the Code of Federal Regulations was NRC only and Ohio was precluded from adopting the exemptions. Ohio moved forward with the formal rule adoption process without the exemption. The rule was adopted as a final rule effective October 19, 2001. When licensees became aware that the exemption provision had been removed from the rule, they became upset. As an interim measure, Ohio has indicated to licensees that we will not require compliance with provisions from which NRC licensees are exempt. However, this is not an effective way to resolve this problem.

The Bureau of Radiation Protection reviewed the matter and determined that not adopting the exemption provision had inadvertently created a situation where NRC licensees were not required to meet standards that the same class of licensee in Ohio was required to meet. This difference was not due to policy considerations here in Ohio. Rather it was due to a NRC requirement that prevented Ohio from adopting the exemption--and maintain compatibility with NRC. Discussions with members of your staff indicate that it was not NRC's desire to require states to adopt a provision requiring states to regulate a matter that NRC chose not to regulate. However, it appears that the outcome is just that. As the compatibility provisions currently stand, Ohio, and all other agreement states, are precluded from adopting the exemption provision found in 10CFR 71.10(b) and 10CFR 71.10(c).

I believe this compatibility provision is wrong for the reasons stated above. Agreement states should be able to adopt standards that are consistent across the country. I would appreciate your expedited review of this matter so that Ohio is relieved of having to adopt requirements that are not required of NRC licensees.

If you have any questions regarding this matter, please do not hesitate to contact me at 614-644-2727.

Sincerely,

Roger L. Suppes, Chief  
Bureau of Radiation Protection

CF: James Lynch, Region 3, NRC