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Pearce O'Kelley

AFFILIATION:

ADDRESSEE:

Chairman Richard Meserve

SUBJECT:

Summary of 2002 OAS annual meeting

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Organization of Agreement States

**Pearce O'Kelley, Chair**  
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**Gary Robertson, Treasurer**  
**Kenneth Weaver, Secretary**

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January 27, 2003

Commissioner Richard A. Meserve, Chairman  
U.S. NRC  
Washington, DC 20555

Dear Chairman Meserve:

As chair of the Organization of Agreement States (OAS), the membership at the annual meeting in October agreed that the Commissioners should be provided with a summary of the meeting along with other issues of importance to Agreement States. Hopefully, I can convey the thoughts of the Agreement States accurately and succinctly.

Before I address these issues, I would like to congratulate you on behalf of the OAS on your impending position as President of the Carnegie Institution of Washington. I also want to thank you for all you have done to improve and encourage the dialogue between Agreement States and the NRC. Your willingness to meet with Agreement State personnel in Washington is greatly appreciated. We wish you the best in your new position, but are saddened to see you leave the Commission.

Let me preface the first issue by saying the OAS board is extremely appreciative of the open door policy extended to us and all Agreement State personnel by all Commissioners when we are in the Washington area. Your willingness to meet with us and listen to our concerns has been very beneficial to both the NRC and the Agreement States.

Of major concern to a majority of the State attendees at the 2002 meeting was the absence at the meeting of any of the NRC Commissioners for the second consecutive year. We appreciate the NRC's support of the annual meeting by funding the travel of management and staff and encouraging their attendance and participation. However, we feel it is of utmost importance for the Commissioners to attend as well. The membership would appreciate the Commissioners placing a high priority on attending the annual OAS meeting. The annual commission briefings are very beneficial and allow the boards of OAS and CRCPD to communicate directly with the Commissioners. However, the OAS board does not and cannot speak for each individual state. Politics, policies, and economic conditions vary from state to state. State program directors feel that having Commissioners present at the annual meeting gives them the opportunity to express their individual concerns to the Commission. Direct, face-to-face communication can and will be very beneficial to both the NRC and the States. The annual meeting provides an excellent

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venue for this one on one exchange. If the National Materials Program is to function as a true partnership between the States and the NRC, equal status and respect must be given the Agreement States. I feel this is the intent of both the Commission and the NRC staff. Attendance at the annual meeting would go a long way in convincing the States that they are viewed as a vital and important partner in the effective regulation of radioactive materials in the United States.

Therefore, I would like to personally invite and urge the Commissioners to attend and participate in next year's annual OAS meeting. The meeting will be held in Chicago, Illinois, October 13-16, 2003, at the Hyatt Lodge at McDonald's Campus. Hopefully, this early notification will give the Commissioners ample time to fit the OAS annual meeting in their busy schedules. Logistical details will be sent to all Commissioners when plans are finalized.

The 2002 annual meeting was a resounding success according to the comments received by participants. The agenda topics were rated very relevant and useful. The most useful topics from an informational standpoint were the National Materials Program, the Standing Compatibility Committee, and the Interim Compensatory Measures (ICM's). Technical topics included excellent presentations on PET and interpreting sample data.

The business meeting was very productive. The membership approved by-laws for the operation of OAS. They also voted in favor of OAS incorporating. We are currently pursuing incorporation in Washington, DC with the help of Richard Burk and Associates. Elections were held for two OAS board positions. Stan Fitch of New Mexico was elected Chair-elect and Gary Robertson of Washington was elected Treasurer.

National security and the development of the ICM's were of great interest to all attendees. I would like to address a few of the concerns mentioned. First, everyone was thankful that NRC allowed state input on the first ICM's. After a rocky start, cooperation and coordination significantly improved. The membership felt strongly that every effort should be made to ensure that future ICM's are issued under health and safety and not under common defense and security. The States feel that an equivalent level of protection and security can be provided to state licensees by the Agreement States. Most, if not all states, have the authority to issue emergency orders and have expressed a willingness to require the same level of security that NRC would require. OAS has requested of the Office of State and Tribal Programs and the Office of National Security and Incident Response that Agreement States be included in any discussions and policy decisions with the Office of Homeland Security. The initial response was that this request was being evaluated. I also understand that any monies for radiological response, training, and preparation will be to and through the NRC. Since the Agreement States issue over 75 percent of the non-reactor, non-source material licenses, we feel that we should have a seat at the table when planning the national program. Any help you could be in helping us achieve an active role in this area would be greatly appreciated.

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Another area of significant interest to the membership is the National Materials Program (NMP). OAS enthusiastically supports the NMP concept and appreciates NRC's solicitation of state input. We sincerely hope that this will result in a true partnership between the NRC and Agreement States. Although many issues still need to be resolved, the progress to date has been encouraging. The pilot projects are under way and appear to be running smoothly. At the annual meeting, OAS began the process of our agreed upon pilot, Developing Guidance for New Modalities or Use of Radioactive Materials, by polling the States for input on potential uses for consideration. One area where the States would like an active role is the Standing Compatibility Committee. The setting of compatibility levels should be done with openness and consistency. We feel that the Committee should have Agreement State representation and should be independent of the authors of the rule. We would appreciate serious and urgent movement in establishing this Committee and defining its processes. The other main concern regarding the NMP is how all aspects of the program will function (i.e., what processes will be used, who will be in charge, how will priorities be set, etc.). I am pleased to say that we have recently seen movement in addressing these concerns.

Representatives of the Government Accounting Office (GAO) were present at the meeting. One issue they were interested in was the possible need to amend the Atomic Energy Act (AEA). The Agreement States have expressed an interest in several areas with regards to opening the AEA. The first issue regarding the AEA that the States and OAS strongly support is the centralization of all federal radiation regulatory and response programs in one federal agency. The current fragmentation among many agencies not only results in dual regulation for our licensees but also subjects them to different standards for the same regulated material. It is also burdensome to State Programs. The recently signed memorandum of understanding between NRC and EPA is a prime example of this, considering that 75% of licensees were not considered. Another issue that OAS hopes to be considered in any amendment is the allowing of State Representatives on the Management Review Board to have voting privileges. We appreciate NRC's efforts to determine if this could be allowed. But we feel it can and should be accomplished legislatively. The States feel that our involvement is imperative in the amendment to give NRC authority over some non-AEA material. The States have been regulating Accelerator Produced Material (ARM) for many years and their expertise should be utilized and deferred to. With regards to the National Materials Program, the AEA should be evaluated to see what areas need to be changed to ensure that a true partnership can be accomplished. Other legislative changes should also be considered. Perhaps a legal requirement along the lines of that which created the Advisory Committee on Medical Uses of Isotopes (ACMUI) should be considered to ensure Agreement State perspectives are addressed. To truly have a partnership, the Agreement States must be given a more equal role in the development and operation of the NMP.

The participants at the annual meeting were extremely pleased with the improvements in communication and cooperation between the States and NRC. Agreement State representation on working groups is very much appreciated. Suggested improvements to the process were: (1) ensure all working groups have charters and the head of the group is identified; (2) ensure all members know and understand the process and desired result; (3) increase the lead time between solicitation of members and the beginning of work; (4) ensure OAS representation on all steering committees; and (5) use teleconferencing whenever possible.

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Another issue that the membership wanted relayed to NRC concerns the Part 35 Training and Experience requirements. The staff at NRC has stated that the required time for state adoption may only be one year. The OAS would like to go on record as opposing this one-year requirement and request that States be given the same three year time limit as they are with all other regulations. The reasons for this position are numerous, but the time it takes for most states to promulgate regulations is longer than one year.

I apologize for the length of this letter, but the membership of OAS wanted to be sure the Commission was informed of these issues. In order to get a more detailed look at the 2002 Annual Meeting we have posted speaker's slides and handouts on the Colorado program's website. The address is <http://www.cdphs.state.co.us/lr/oas-2002/agenda.htm>.

Again, I would like to thank you for all your support of the Agreement States and wish you well in your new position. If the OAS can be of any service to you or the Carnegie Institution, please let us know.

Sincerely,



T. Pearce O'Kelley, Chair  
Organization of Agreement States

cc: Commissioner Greta J. Dicus  
Commissioner Jeffrey S. Merrifield  
Commissioner Nils Diaz  
Commissioner Edward McGaffigan, Jr.  
Paul Lohaus, Director, Office of State and Tribal Programs  
OAS Executive Board

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**Date:** Mon, Jan 27, 2003 2:25 PM  
**Subject:** Summary of 2002 OAS Annual Meeting

Dear Chairman Meserve,

Attached is a letter outlining the events of the 2002 OAS annual meeting. Our membership requested that I provide all Commissioners with a summary of the meeting. If you have any questions about the letter, please call me at 803-545-4403 or by e-mail okelletp@dhec.sc.gov.

Pearce O'Kelley, Chair  
Organization of Agreement States

**CC:** <PHL@nrc.gov>