

April 18, 2003

Mr. T. Pearce O'Kelley, Chair
Organization of Agreement States
Bureau of Radiological Health
Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Dear Mr. O'Kelley:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I thank you for your January 27, 2003 letter regarding the 2002 Organization of Agreement States (OAS) Meeting and the invitation extended to NRC Commissioners to participate in the next OAS annual meeting, to be held October 14 - 17, 2003, in Oak Brook, Illinois. I'm sure that you understand that as a result of current activities, the schedules for Commissioners are somewhat uncertain. The Commission will make every effort to get back to you in due course to let you know whether or not one or more NRC Commissioners will participate in the next OAS annual meeting. We agree that face-to-face interactions improve communication and understanding. I would note that the annual briefings by the OAS and the Conference of Radiation Control Program Directors, Inc. are beneficial to the Commission.

I am pleased to recognize the continued growth and development of the OAS, your support for the establishment and implementation of the National Materials Program, and the participation of Agreement State personnel on a number of joint OAS/NRC Working Groups. I also read, with interest, your statement on a proposal to amend the Atomic Energy Act (AEA) to centralize Federal radiation activities and to provide for a more formal relationship between the OAS and the NRC. The Commission, as you know, is considering a legislative proposal to expand NRC jurisdiction to regulate Accelerator Produced Radioactive Material and discrete sources of naturally occurring radioactive material.

The Commission will continue to consider the views of the OAS and others during the development of the revision of Training and Experience criteria for users in the medical area. As we cope with the challenges surrounding radiological issues, we will continue to recognize the role of the Agreement States and the number of licensees they regulate in considering our charge to protect public health and safety. At the same time, NRC will continue to regulate those persons and activities which remain the sole responsibility of the NRC under the AEA for common defense and security. In this respect, the Commission has approved, with modification, proposed orders and compensatory measures (CMs) for panoramic irradiators. As a part of the approval, the Commission provided policy direction to the staff that future CMs for other categories of materials licensees also be issued on the basis of common defense and security.

In reaching its decision to issue future materials CMs on the basis of common defense and security, the Commission considered the position of the Agreement States expressed in your letter dated November 12, 2002, that future material CMs should be issued based on public health and safety. On balance of consideration of this position and other factors, the Commission decision to issue subsequent materials CMs was based on NRC's reserved authority under the AEA of 1954, as amended, to promote the common defense and security. This decision ensures a greater consistency and uniformity in implementation and enforcement of the CMs through a single regulatory agency and will provide NRC with the ability to reach the national population of affected materials licensees within a short time frame, should the need arise as it did on March 1. This Commission decision also addresses needs reflected in the current environment to place consistent controls on all licensees (NRC and Agreement States) for protection of sensitive homeland security and safeguards information. To ensure this, the Commission has directed staff to designate the CMs and the implementing guidance as safeguards information pursuant to Section 147 of the AEA. In addition, the Commission directed that the orders to licensees include a clear explanation of the steps the NRC expects the licensees to take to protect this information. This decision is consistent with implementation of existing reporting requirements in 10 CFR Part 150 on transfers of certain quantities of source and special nuclear material, and tritium, by Agreement State licensees.

The Commission's decision is not intended to, and it should not be interpreted to carry any implication about the ability of Agreement State programs to carry out radiation control programs adequate to protect the public health and safety. Also, the decision should not be construed as reflecting any concern regarding the further efforts that each Agreement State has provided to support NRC in National efforts to protect the common defense and security.

We appreciate receiving the input and views of the OAS on the full range of issues we have in common. The Commission values the work of the OAS on behalf of the Agreement States. As you know, we have interacted in the past on a number of the issues you cite in your letter and, as the Commission addresses these issues in the future, it will continue to coordinate and consult with the OAS.

Sincerely,

/RA/

Nils J. Diaz