

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

To: Lohaus, STP

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AUTHOR: William Passetti
AFFILIATION: FCR&NS
ADDRESSEE: Paul Lohaus
SUBJECT: NRC's Generally Licensed (GL) Device Rule...particular the assigned compatibility level...comments regarding STP-05-015
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Jeb Bush
Governor

John O. Agwunobi, M.D., M.B.A.
Secretary

February 22, 2005

Paul H. Lohaus, Director
Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Lohaus:

This letter is to provide our concerns regarding NRC's Generally Licensed (GL) Device Rule, in particular the assigned compatibility level, as well as comments regarding STP-05-015.

Florida has had a GL program requiring registration of all GL sources, with the exception of some tritium exit signs, for over 20 years. The program includes source registration, fees, annual inventories and inspections. This program was put in place for many reasons, among them; to protect the public's health and safety, protect the environment and keep sources out of the scrap metal and other undesirable streams.

Florida has been one of several states that have encouraged the NRC over the years to adopt a similar program. We have received numerous comments during several program reviews, that this was an excellent program that could be looked to by other states and the NRC.

It was very disturbing to learn at the OAS meeting and from the October 14, 2004 letter to Maine's radiation control program that the Commission changed the level of compatibility for the GL rule to a B, against the recommendations of the working group and the Agreement States. If this decision is not changed it would require us to reduce our GL program and lesson protection of the public's health and safety to be compatible with certain NRC rules.

The main reason given for this change was that there are "significant transboundary implications." States and the NRC have had different GL requirements for years with little discussion of transboundary problems. What are the problems if Florida were to continue to register smaller quantities or different radionuclides than those in NRC's rule? From the reading of the rule it appears that manufacturers and distributors would still be required to notify Florida of all GL sources sent to our state. Any further actions concerning registration etc., would be between the state and individuals in Florida.

To override our ability to regulate health and safety issues based on a questionable, at best, transboundary argument is not appropriate. It doesn't consider multi-million dollar source melts of smaller sources, as experienced recently in Florida, and security issues of controlling large numbers of smaller sources.

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It is not clear what options are available to the Commission to change this compatibility decision but we would ask that a change be considered to allow Florida to continue its longstanding GL program that includes smaller quantities and different radionuclides than those established in 31.5(c)(13). Hopefully this problem was an unintended consequence of the Commission's decision with regards to GL programs like Florida's that can be quickly rectified.

With regards to STP-05-015 and the Status of State Adoption of GL Rule and Compatibility Concerns we have the following comments:

Regarding item 1 under key issues of concern, we would hope the Commission is briefed on the concerns in this letter. In addition, Florida does not desire flexibility to "establish" more stringent requirements. We wish to continue our longstanding program of protecting the state's public health and safety through a GL program that has served the state well for the past 20 years.

Regarding the status of state actions, the attached table stated that the NRC has not reviewed License Conditions and the state needs to submit them for review. Following is an excerpt from Florida's 2003 IMPEP report regarding this issue. *"The Bureau addressed this amendment by adding a license condition to affected licenses prior to August 16, 2001. The Bureau also provided copies of the license condition to NRC for information in response to All Agreement State Letter STP-01-028, dated March 2001. NRC has reviewed these conditions and determined that they meet the compatibility requirements."*

Thank you for considering our views on this important issue. If you have any questions, please feel free to contact me at (850) 245-4266.

Sincerely,



William A. Passetti, Chief
Bureau of Radiation Control
Florida Department of Health

cc: ✓ Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons