

EDO Principal Correspondence Control

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FINAL REPLY:

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Organization of Agreement States

TO:

Chairman Diaz

FOR SIGNATURE OF :

** GRN **

CRC NO: 05-0160

Lohaus, STP

DESC:

Unified System of Regulatory Control Over All
Radioactive Materials That Could Be Used by
Terrorist in a Dirty Bomb

ROUTING:

Reyes
Virgilio
Kane
Merschhoff
Silber
Dean
Burns
Cyr, OGC
Strosnider, NMSS
Zimmerman, NSIR

DATE: 04/01/05

ASSIGNED TO:

CONTACT:

STP

Lohaus

SPECIAL INSTRUCTIONS OR REMARKS:

Per request from SECY, attach the Legislative
Package which was recently submitted to Congress.

Coordinate with OGC and NMSS.

Template: SECY-017

FRids: SECY-01

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Apr 01, 2005 11:39

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AUTHOR: Jared Thompson
AFFILIATION: AR
ADDRESSEE: Nils Diaz
SUBJECT: Unified system of regulatory control over all radioactive materials

ACTION: Direct Reply
DISTRIBUTION: RF

LETTER DATE: 01/14/2005

ACKNOWLEDGED: No
SPECIAL HANDLING: EDO/OGC for Direct Reply. EDO to coordinate response with OGC.

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DATE DUE: 04/22/2005 DATE SIGNED:

EDO --G20050228



HEALTH PHYSICS SOCIETY
ORGANIZATION OF AGREEMENT STATES



Organization of Agreement States

January 14, 2005

The Honorable Nils Diaz
U. S. Nuclear Regulatory Commission
White Flint One North
11555 Rockville Pike
Rockville, MD 20852

Dear Chairmian Diaz:

The events of September 11, 2001 have underscored the importance of empowering federal agencies with the appropriate authority to carry out their charge of protecting our society from acts of terrorism. In this light, the fact that the United States does not have a unified system of regulatory control over all radioactive materials that could be used by terrorists in a radiological dispersal device (commonly known as a "dirty bomb") continues to be a weakness in our federal regulatory system.

The primary federal responsibility for the control of commercial uses of most radioactive materials resides with the U.S. Nuclear Regulatory Commission (NRC). The radioactive materials over which the NRC has authority, pursuant to the Atomic Energy Act of 1954, as amended, do not include the naturally occurring radionuclide, radium-226, or a number of other radionuclides that are generally produced by particle accelerators. The International Atomic Energy Agency has included these radionuclides on their list of potentially "dangerous" materials, because they may be effectively used in a dirty bomb. Congressional action is needed to fill the statutory void by bringing radium-226, particle accelerator-produced materials, and other radioactive materials with comparable risks under a single federal authority, thus ensuring the security of these radiological sources and furthering the protection of public health and safety.

The Health Physics Society (HPS) and the Organization of Agreement States (OAS), which represent radiation-safety professionals and state radiation control program staff members, have recently issued a position statement calling for Congressional action to ensure uniform security and safety regulations for all radioactive materials. This position statement has been jointly developed by our organizations in an effort to assist Congress in addressing this public health and safety issue. This was the subject of legislation in the 108th Congress, but was not acted on during that Congress. As radiation safety experts, we feel that our joint effort can assist the 109th Congress in addressing this issue. Our efforts represent input from scientific and regulatory stakeholders who, in their daily work, are specifically focused on issues related to radiological public health and safety.

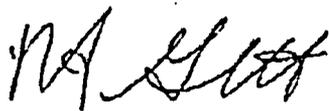
During the 108th Congress, Senate bills S.1043, "Nuclear Infrastructure Security Act of 2003," and (most recently) S. 2763, a "Bill to amend the Atomic Energy Act to clarify the treatment of accelerator-produced and other radioactive material as by-product material," contained provisions for placing control of radium-226, particle accelerator-produced materials, and other naturally occurring materials under the authority of the NRC. Although the language in these bills addressed the centralized control of these radioactive materials for security purposes, they would have resulted in unintended adverse consequences with respect to: 1) the uniformity of regulatory control for public health and safety purposes; and, 2) radioactive waste disposal.

Anticipating that the 109th Congress will revisit this important issue, the HPS and OAS jointly developed a position statement that provides fundamental principles that future legislation should address. We also drafted proposed legislative language that is consistent with these principles. The attached position statement and supporting draft legislative language address the need to have a uniform regulatory framework for controlling these radioactive sources, as well as the need to ensure appropriate waste disposal options.

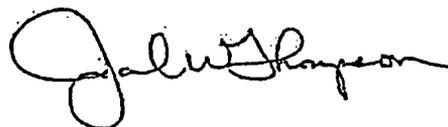
The principles laid out in our joint position statement and proposed legislative language serve to establish a uniform regulatory framework, under the direction of the NRC, for securing these radiological sources, thereby protecting public health and safety. In addition, our joint efforts address authorized waste disposal options that are safe, economical, and commensurate with the level of risk that these radioactive sources pose to health and safety. The waste disposal options are proposed to avoid the potential for generating "orphan sources" that would likely result from creating newly-defined AEA materials without providing appropriate disposal options.

We hope that you find the attached materials of interest as we encourage Congress to take action on this important security and public health and safety issue. Please do not hesitate to contact us if you need further information on this material or issue.

Sincerely,



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Attachments



Organization of Agreement States

CONGRESSIONAL ACTION IS NEEDED TO ENSURE UNIFORM SAFETY AND SECURITY REGULATIONS FOR CERTAIN RADIOACTIVE MATERIALS

POSITION STATEMENT OF THE HEALTH PHYSICS SOCIETY AND ORGANIZATION OF AGREEMENT STATES *

The Health Physics Society (HPS) and the Organization of Agreement States (OAS), which represent radiation safety professionals and regulatory agency stakeholders, believe congressional action is needed to ensure the uniform regulation of all discrete sources of radioactive material to provide appropriate radiation safety standards to protect the public from these sources, including protection from malevolent uses of such sources by terrorists.

Currently, naturally occurring radioactive materials, especially radium, and radioactive materials produced by nuclear particle accelerators (accelerator-produced radioactive material) are not comprehensively regulated in the United States. These sources are not defined in the Atomic Energy Act of 1954, as amended (AEA), which has the effect of excluding these sources from regulation by the independent federal agency charged with regulation of other radioactive materials, i.e., the United States Nuclear Regulatory Commission (NRC). As a result of their omission in the AEA, the regulation of these sources rests with various federal agencies and each individual state. Our organizations believe that this fragmented regulatory framework allows for inconsistent standards for the possession, use, and disposal of these sources, which can potentially have a negative impact on public health and safety and on national common defense and security.

Therefore, we recommend congressional action to ensure not only the security of such sources, but also the uniformity of standards regarding their possession, use, and disposal.

The HPS and OAS jointly recommend enactment of federal legislation to regulate these sources according to the following principles:

1. Discrete sources of technologically enhanced naturally occurring radioactive material (TENORM)¹ and accelerator-produced radioactive material should be uniformly regulated throughout the United States. The most effective way to ensure uniformity in regulation is to include such sources in the definition of byproduct material in the AEA.
2. The NRC should be the sole agency authorized to promulgate federal regulations establishing requirements for controlling the acquisition, possession, transfer, use, and disposal of such sources to protect the public health and safety and the national security of the United States, except for those sources regulated by the United States Department of Energy.
3. The NRC shall, in consultation with the states and other stakeholders, develop a regulatory definition of the term "discrete," as applied to sources of TENORM and accelerator-produced radioactive materials. This definition should include both an activity limit and a concentration limit on any such source, such that the radiological hazards are controlled in a manner consistent with other sources of radioactive material posing the same radiological hazard.
4. Disposal of such sources should be allowed at facilities licensed by the NRC, by states that have entered into agreements with the NRC pursuant to the AEA, or in facilities regulated pursuant to the Resource Conservation and Recovery Act (RCRA) when such disposal is appropriate and authorized by the regulatory agency (or agencies) having jurisdiction.
5. Placing such sources under the NRC's jurisdiction should be done in such a manner that (a) does not change the definition of low-level radioactive waste in the Low-Level Radioactive Waste Policy Amendments Act of 1985 and (b) does not adversely affect the implementation of congressionally approved Compacts pursuant to the Low-Level Radioactive Waste Policy Act of 1980 as amended, thus preventing such sources from becoming "orphaned" from disposal.
6. In fulfilling its new responsibilities, the NRC shall consult with state radiation control agencies that have established regulations for controlling the safe use, security, and disposal of these sources.
7. The NRC is encouraged to consult with other federal agencies as it develops regulations for controlling the safe use, security, and disposal of these sources.

Footnote

¹ TENORM is naturally occurring radioactive material that has been removed from the natural environment and has been concentrated to levels greater than that found in the natural environment due to human activities. (Indoor radon, because it is not technologically enhanced, should be specifically exempt from this provision for discrete sources.)

* The Health Physics Society is a nonprofit scientific professional organization whose mission is to promote the practice of radiation safety. The Organization of Agreement States is a nonprofit society of staff members from those states that have established programs under section 274 of the AEA to assume a portion of NRC regulatory authority.

**PROPOSED LEGISLATIVE LANGUAGE TO IMPLEMENT THE POSITION
STATEMENT OF THE HPS AND OAS
"CONGRESSIONAL ACTION IS NEEDED TO ENSURE UNIFORM SAFETY AND
SECURITY REGULATIONS FOR CERTAIN RADIOACTIVE MATERIALS"**

To amend the Atomic Energy Act of 1954 to clarify the treatment of radium, accelerator-produced and naturally occurring radioactive material as byproduct material.

IN THE SENATE OF THE UNITED STATES

A BILL

To amend the Atomic Energy Act of 1954 to clarify the treatment of accelerator produced and other radioactive material as byproduct material.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TREATMENT OF ACCELERATOR-PRODUCED AND OTHER
RADIOACTIVE MATERIAL AS BYPRODUCT MATERIAL.**

(a) DEFINITION OF BYPRODUCT MATERIAL- Section 11e. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)) is amended--

(1) by striking 'means (1) any radioactive' and inserting 'means--

'(1) any radioactive';

(2) by striking 'material, and (2) the tailings' and inserting 'material;

'(2) the tailings'; and

(3) by striking 'content.' and inserting 'content;

'(3)(A) any discrete source of radium that is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph; or

'(B) any discrete source of material that—

'(i) has been made radioactive by use of a particle accelerator; and

'(ii) is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph; or

'(C) any discrete source of naturally occurring radioactive material, other than source material that—

'(i) has been removed from the natural environment and has been concentrated to levels greater than that found in the natural environment due to human activities; and

'(ii) before, on, or after the date of enactment of this paragraph, is extracted or converted after extraction'.

(b) AGREEMENTS- Section 274b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by inserting after paragraph (2) the following:

'(3) byproduct materials (as defined in section 11e.(3));

(c) REGULATIONS-

(A) IN GENERAL-

(i) Not later than the effective date of this section, the Nuclear Regulatory Commission shall promulgate final regulations establishing such requirements and standards as the Commission considers necessary for the acquisition, possession, transfer, use, or disposal of byproduct material (as defined in paragraph (3) of section 11e. of the Atomic Energy Act of 1954 (as added by subsection (a))), and

(ii) The Commission shall establish a definition of "discrete" as used in the definition of 11.e(3) material such that the radiological hazards of 11.e(3) material are controlled in a manner consistent with materials posing the same radiological hazard.

(B) COOPERATION- The Commission shall cooperate with the States in formulating the regulations under paragraph (A)(i).

(d) WASTE DISPOSAL

(1) Notwithstanding any other Federal or State law or any action that has been taken to implement such law, commencing with the effective date of subsection (a), byproduct material as defined in section 11-e.(3) of the Atomic Energy Act of 1954 may be transferred to and disposed of -

(A) in a disposal facility licensed by the Commission, if the disposal meets the requirements of the Commission, or

(B) in a disposal facility licensed by a State that has entered into an agreement with the Commission under section 274b. of the Atomic Energy Act of 1954, if the disposal meets requirements of the State that are equivalent to the requirements of the Commission, or

(C) in a disposal facility licensed for the disposal of 11 e.(2) byproduct material pursuant to (A) or (B) above, provided however, Byproduct Material as defined in Section 11e.(3) shall be considered equivalent to Byproduct material as defined in paragraph (2) of section 11e. of the Atomic Energy Act of 1954 when so disposed, or

(D) under the provisions of Title II of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), popularly known as the "Resource Conservation and Recovery Act," to the same extent as such material was subject to those provisions before enactment of this section.

(2) Byproduct material as defined in section 11 e.(3) of the Atomic Energy Act of 1954 shall not be considered low-level radioactive waste as defined in Title I of the Low-Level Radioactive Waste Policy Amendments Act of 1985, or in implementing any Congressionally approved Compact entered into pursuant to the Low-Level Radioactive Waste Policy Act of 1980 as amended.

(e) IMPLEMENTATION

(1) EFFECTIVE DATE - Except with respect to matters that the Nuclear Regulatory Commission determines are required to be addressed earlier to protect the public health and safety or to promote the common defense and security, the amendments made by this section take effect on the date that is 1 year after the date of enactment of this Act.

(2) TRANSITION- To ensure an orderly transition of regulatory authority with respect to byproduct material as defined in paragraph (3) of section 11e. of the Atomic Energy Act of 1954 (as added by subsection (a)), not later than 180 days before the effective date of this section, the Nuclear Regulatory Commission shall prepare and provide public notice of a transition plan.

(A) The transition plan shall be developed in coordination with States that—

(i) have not, before the effective date of this section, entered into an agreement with the Commission under section 274b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)); or

(ii) in the case of a State that has entered into such an agreement, has not, before the effective date of this section, applied for an amendment to the agreement that would permit assumption by the State of regulatory responsibility for such byproduct material.

(B) The transition plan shall include a provision for continued regulation (on a potentially temporary basis to be determined by the NRC in coordination with the States) of 11e.(3) byproduct material, in States that have a program of regulation already in place for 11e.(3) byproduct material, in a manner consistent with the proposed system of regulation, such as those States designated "Licensing States," by the Conference of Radiation Control Program Directors.