

EDO Principal Correspondence Control

FROM: DUE: 04/11/05

EDO CONTROL: G20050212  
DOC DT: 02/24/05  
FINAL REPLY:

Jared W. Thompson  
Organization of Agreement States

Edgar D. Bailey  
Conference of Radiation Control  
Program Directors

TO:

Chairman Daiz

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO: 05-0163

Lohaus, STP

DESC:

General License Rule - 10 CFR 31/Request for  
Meeting with the Commission

ROUTING:

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

DATE: 03/26/05

ASSIGNED TO:

CONTACT:

STP

Lohaus

SPECIAL INSTRUCTIONS OR REMARKS:

Set up individual meetings for the Commissioners.  
Meeting with the Chairman should be set up through  
Jan Lepre, OEDO.

*Template: SEC4 017*

*E-RIDS: SEC4-01*

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

Date Printed: Mar 24, 2005 16:41

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**PAPER NUMBER:** LTR-05-0163 **LOGGING DATE:** 03/24/2005  
**ACTION OFFICE:** EDO  
**AUTHOR:** Jared Thompson  
**AFFILIATION:** OH  
**ADDRESSEE:** Nils Diaz  
**SUBJECT:** Concerns comments and remarks regarding "civil disobedience" at the 2/15/2005 Commission Briefing--  
**ACTION:** Appropriate  
**DISTRIBUTION:** RF  
**LETTER DATE:** 02/24/2005  
**ACKNOWLEDGED:** No  
**SPECIAL HANDLING:** OCM #6818...rec'd in SECY via Chairman's office...3/24/05  
**NOTES:** Staff, setup meeting with the Chairman and Individual Commissioners  
**FILE LOCATION:** ADAMS  
**DATE DUE:** **DATE SIGNED:**



Organization of Agreement States



February 24, 2005

The Honorable Nils J. Diaz, Chairman  
U. S. Nuclear Regulatory Commission  
Mail Stop O-16C1  
Washington, D.C. 20555-0001

05 FEB 25 PM 1:06

STP

Dear Chairman Diaz:

As Chair of the Organization of Agreement States (OAS) and the Chairperson of the Conference of Radiation Control Program Directors (CRCPD), we are writing to you on behalf of the Boards of these two organizations. The purpose of this correspondence is to discuss the comments and remarks made during the Commission Briefing on February 15, 2005. The comment concerning the "civil disobedience" of the Agreement States with respect to the adoption of the General License rule (10 CFR Part 31) appears to reflect a lack of respect, trust, and confidence on the part of the Commission and a disregard for differing professional opinions. These comments could be detrimental to the Nuclear Regulatory Commission (NRC)/Agreement State "partnership" which has endured and prospered with many joint successes for the past 46 years. In recent years, the Agreement States through the OAS and the CRCPD have worked proactively to communicate and establish a productive relationship with the NRC and indeed with the Commissioners themselves.

In January 2005, the Commission approved the National Materials Program (NMP) recommendation to use the "Blended Option" as a mechanism to utilize the expertise and knowledge of Agreement State Programs in the regulatory process. The public comments on February 15, 2005 reflect a non-supportive attitude of the Commission, which questions the viability of the "Blended Option." These comments demonstrate an apparent lack of genuine understanding of state positions on the issues. This attitude degrades the relationship between the Agreement States and the Commission and could make it more difficult for state radiation control programs to justify allocating resources to the cooperative efforts of the NMP or other Commission initiatives. The large portion of the wealth of knowledge in health physics that exists in our country resides in state radiation control programs. It appears that the NRC could be unintentionally ignoring that fact.

Actions, opinions or disagreements by the Agreement States should not be considered irresponsible or disobedient. Partners should have the right to disagree. The Agreement States are committed to continuing to implement the responsibility relinquished by the NRC to ensure and protect public health and safety within their respective states. This responsibility is not viewed lightly and is accepted because we desire to do the job right. Even without NRC oversight, we remain committed to protecting the citizens of our states.

The Agreement States do understand and agree with the NRC perspective on a majority of the rulemaking decisions. The NRC should also strive to understand the States' perspective at times when we may be in disagreement. After all, the primary focus of any and all rulemaking should be the protection of public health and safety. NRC and the Agreement States must work cooperatively to maintain a high level of public confidence and trust, responsibilities we cannot afford to compromise.

There has been no coordinated delay by the Agreement States with respect to the adoption of the General License Rule. Some Agreement States disagree very strongly with the Commission's decision regarding the "Compatibility B" designation for this rule. The Agreement States want uniform and consistent standards, but they also want the standards to be based on good health physics and radiation safety practices. It was mentioned during the Commission Briefing that the states always oppose any "Compatibility B" designation and the disagreement regarding 10 CFR Part 35 was cited as an example. Part 35 is a large and broad rule for the use of radioactive materials in the medical environment. The Agreement States only disagreed with one section designated "Compatibility B," the Training and Experience Section. The Agreement States willingly accepted the vast majority of 10 CFR Part 35, even though we did not fully agree with the rationale of some of the changes. States considered the Part 35 Training and Experience Section to be an item of health and safety that needs much stricter regulation, thus the disagreement with the "Compatibility B" designation.

Setting a "Compatibility B" designation on any rule can have huge consequences for the Agreement States. In the case of the General License Rule, this designation affects at least seven states that would be required to reduce the level of protection already in place in order to remain compatible with the NRC requirements. Reducing the level of protection can be both professionally wrong and politically troublesome for the NRC and the states. Some states have been specifically licensing these devices for many years. In addition, the compatibility designation has a potential effect on several Agreement States' budgets, as these programs collect fees from licensees and there could be a reduction in the number of licensees. The states have been requesting that the NRC improve the General License requirements for more than thirty (30) years. It appears that the NRC did not improve the requirements to the same level that some states are currently maintaining. The Agreement States desire the flexibility to establish and maintain more stringent requirements.

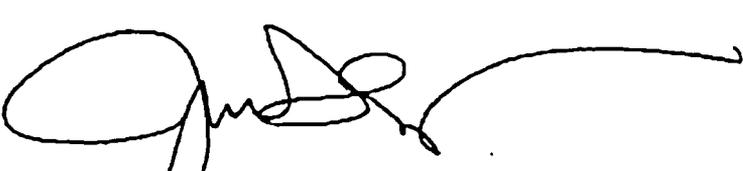
The OAS Rulemaking and Compatibility Committee have been developing a petition for rulemaking regarding the General License Rule. As part of the preparation for the petition, a survey was conducted to determine the direction for the petition for rulemaking. Thirty-one (31) Agreement States responded to the survey and 28 (90%) of the responding states disagreed with the NRC "Compatibility B" designation. The petition for rule making will recommend that a large majority of the currently Generally Licensed devices be specifically licensed. This petition for rulemaking will be submitted to the Commission sometime in the early summer of 2005.

The OAS Executive Board and CRCPD Board of Directors respectfully request a private meeting to discuss these issues. The OAS and CRCPD representatives would like to further explain the views expressed in this letter and hopefully reduce the acrimony and distress that has arisen from what have been perceived as inappropriate comments. It is our desire to meet with each Commissioner privately at a time when each is available during a two-day window. Please contact us, so that we may coordinate schedules.

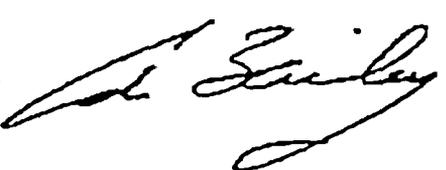
The Agreement States, OAS and CRCPD remain committed to work cooperatively with the NRC to protect public health and safety, the environment and the common defense and security. We look forward to working with the Commission to improve our understanding of issues and our working relationship.

If you have questions or need additional information, please contact either of us.

Respectfully,



Jared W. Thompson, Chair  
Organization of Agreement States



Edgar D. Bailey, CHP, Chairperson  
Conference of Radiation Control Program Directors

cc: OAS Executive Board

Tom Kerr, Executive Director  
Conference of Radiation Control Program Directors

Luis A. Reyes, Executive Director for Operations  
USNRC

Martin J. Virgilio, Deputy Executive Director for Operations  
USNRC

Paul H. Lohaus, Director, Office State and Tribal Programs  
USNRC