

November 8, 2004

Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Paul Lohaus, Director, STP

Re: State Agreements Program Letter, STP-04-074
"Planned Solicitation of Public Comment on Draft Rule Wording: Revision of Certain Provisions of 10 CFR 2, 30, 40, 50, 70, 73 and 76 Related to Protection of Safeguards Information"

Dear Mr. Lohaus:

The Illinois Emergency Management Agency, Division of Nuclear Safety (Division) hereby provides comments requested in the above-identified Agreement States letter relating to proposed revisions of regulations to reflect recent practices reflected in orders and protection of information.

In that the proposed changes largely affects licensees outside the scope of an agreement state, the Division has no comment on the proposed codification of those orders regarding protection of safeguards information. However, additional changes to 10 CFR 30 hint that byproduct licensees may also be more directly subject to this rule. Although the section noted as "Purpose of Rulemaking" refers to a graded approach in determining which category of licensee will be subject to the requirements, the proposed rule does not indicate what the Commission has identified as its "Quantities of Concern". Section 73.22(a) only gives a vague reference that graded protective measures would have to be taken for "quantities determined by the Commission to be significant to the public health and safety or the common defense and security." Without the Commission having identified those quantities, it is difficult to evaluate the proposed rule making.

Similar orders issued in the past have included some agreement state licensees. To this point in time, the Commission has limited its imposition of orders to those byproduct licensees who, agreeably, have significant quantities of radioactive material and are reasonably capable of complying with those orders, but for which there is still no identified Design Basis Threat. As such, we feel it important to note that if there is an attempt to bring additional byproduct material licensees 'on board' we have significant concern that these licensees would not have the expertise, financial ability, training or in some cases education to comply with the proposed rule or that the material they possess is of significant concern. We urge the Commission to use

caution in its identification of additional licensees that warrant additional security and protection measures worthy of a formal security plan or who may be subject to similar rulemaking.

We appreciate the opportunity to comment on STP-04-074. Should you have any questions regarding the Division's comments, please contact Mr. Perrero of my staff at (217) 785-9929.

Sincerely,

Joseph G. Klinger, Head
Radioactive Materials

JGK:dmp

cc: Jim Lynch, Region III, State Agreements Officer