

July 15, 2005

Mr. John N. Wachtler  
Minnesota Department of Commerce  
Energy Facility Permitting Unit  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, Minnesota 55105

Dear Mr. Wachtler:

On March 24, 2005, the U.S. Nuclear Regulatory Commission (NRC) staff received an inquiry, by e-mail, from you as to whether States have the legal authority to regulate airborne emissions of radionuclides, including the emissions from nuclear power plants. The essential question is whether States are preempted from regulating radionuclide airborne emissions by Federal law, specifically, the Atomic Energy Act. Because the question is essentially a legal one, I have referred your inquiry to the NRC's Office of the General Counsel and coordinated my response with that office.

Whether or not Federal law preempts State action in a specific case is ultimately a question for a reviewing court and any NRC position on whether or not a specific area is preempted would not be legally binding. Matters of preemption are difficult and often involve complicated analysis of laws and their legislative histories. In addition, the issue of what actions to take regarding potentially preempted matters is a separate and equally complicated question.

The NRC is still reviewing the materials you referenced in your e-mails and is still working to provide you its view on whether or not that material creates any new legal authority in States to regulate airborne emissions of radionuclides or whether States are preempted from doing so by Federal law. When the NRC has reached a conclusion on this matter, it will be sure to inform you promptly.

Thank you for your inquiry into this matter.

Sincerely,

*/RA/*

Paul L. Lohaus, Director  
Office of State and Tribal Programs

J. N. Wachtler

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