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ACTION OFFICE: EDO

Appropriate Action
To: Schlueter, STP

AUTHOR: Mr. Robert Walker

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DEDMRS
DEDR
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AO
ADM

AFFILIATION: MA

ADDRESSEE: CHRM Nils Diaz

SUBJECT: Concerns draft proposed rule - 10 CFR Parts 20, 30, 31, 32, 35, 40, "Expanded Definition of Byproduct Material" (STP-06-001)

ACTION: Appropriate

DISTRIBUTION: RF

LETTER DATE: 03/02/2006

ACKNOWLEDGED No

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Date: Thu, Mar 2, 2006 4:04 PM
Subject: Proposed Rulemaking

Honorable NRC Commissioners:

I am not in the habit of writing directly to NRC Commissioners, but I believe that the issue discussed in the attached letter is important enough that this unorthodox method of communicating with NRC is required. I know that NRC staff will already have received similar communications from the Organization of Agreement States and the Conference of Radiation Control Program Directors regarding this issue, but I felt that this was important enough that I needed to write to you directly.

Regards,

Robert Walker, Director
MA Radiation Control Program

<<NARM.doc>>

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Subject: Proposed Rulemaking
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March 2, 2006

Hon. Nils Diaz, Chairman
US Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Diaz:

Re: Draft Proposed Rule - 10 CFR Parts 20, 30, 31, 32, 35, 40, "Expanded Definition of Byproduct Material" (STP-06-001)

Pursuant to the above captioned subject, the Radiation Control Program of the Commonwealth of Massachusetts (MARCP) strongly supports the points and positions contained in the Organization of Agreement States' (OAS) letter dated February 27, 2006.

The MARCP also wishes to take this opportunity to concur with the consensus position of the Agreement States, and with opinions expressed by Non-agreement States to the Conference of Radiation Control Program Directors (CRCPD), that anything other than a Compatibility Level D on this rulemaking would seriously and negatively impact all of the states.


It particularly concerns me that the Energy Policy Act of 2005 (EPAct) directs the NRC, to the maximum extent practicable, to "cooperate with States" and, "use model State standards in existence on the date of enactment of this Act." I perceive this as a clearly stated imperative by the United States Congress for NRC to seek compatibility with the states where expanding NRC's definition of byproduct material is concerned, and not the other way around. I believe that any position taken by NRC to assign a compatibility designation other than D would be contradictory with the intent and spirit of the EPAct.

I urge NRC to take into consideration the long-standing and exceptionally successful regulation of Naturally Occurring and Accelerator Produced Radioactive Materials (NARM) by states under CRCPD's Licensing State Designation and promulgation of regulations based upon CRCPD's Suggested State Regulations, Part N. In many respects, these CRCPD products were originally based upon the best practices and regulatory programs established by NRC, and the test of time has proven their value to the nation. At this time, I believe any consideration by

NRC of imposing undue revisions or restrictions on the states' longstanding success in regulating NARM would be unreasonable.

As a former member of the original National Materials Program Working Group, I believe an alliance formed under a National Materials Program concept is in the best interests of the nation. One of the recommendations of that working group was a Standing Compatibility Committee made up of NRC and state representatives. This committee would jointly determine the most appropriate compatibility level for any given rulemaking, incorporating input from both the state and federal perspectives. Had such a committee agreed upon the compatibility level for this rulemaking, I would not be writing this letter. Therefore, in order to resolve these important issues, I am looking forward to further cooperation between NRC, OAS and CRCPD for an amicable resolution on this matter.

Sincerely,



Robert Walker
Director

cc. Commissioner McGaffigan
Commissioner Merrifield
Commissioner Lyons
Commissioner Jaczko
Chairperson McBaugh, CRCPD
Chairperson Hamrick, OAS
S. Dakubu, MARCP