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USNRC

Janet R. Schleuter, Director  
Office of State and Tribal Programs  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

August 17, 2006 (11:44am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Re: Opportunity to Comment on the Change in Basis for the National Source Tracking System (NSTS) to Public Health and Safety (STP-06-051)

Dear Ms. Schleuter:

The Illinois Emergency Management Agency, Division of Nuclear Safety (Division) has carefully reviewed the information in the above-identified letter of transmittal dated June 13, 2006. The document provides information relevant to the U.S. Nuclear Regulatory Commission's decision to change the basis for the NSTS rulemaking from "Common Defense and Security" to "Protection of the Public Health and Safety." This change will "allow the Agreement States to issue legally binding requirements for their licensees and to conduct the national source tracking inspections of their licensees." However, "The database for the National Source Tracking System would still be maintained by the NRC," and assigned an "immediate mandatory matter of compatibility" classified as compatibility category "B."

If the base authority changes as currently proposed, the net effect will not be to simply "allow," but will instead "require" immediate transfer of all responsibilities and expenses to the Agreement States for this federally conceived and mandated program without any accompanying funds to implement, maintain and enforce the national program in the 34 Agreement States. These 34 states contain the overwhelming majority of the licensees affected by the NSTS. As proposed, the NSTS will be another federally mandated but unfunded program resulting in additional labor and cost burdens to the Agreement States without any proposed means of funding by the States. On March 7, 2006, the Division went on record as not objecting to the NRC's original basis for the promulgation of the NSTS under the Common Defense and Security authority. We stated at that time, and again in this correspondence, that our decision for supporting the original proposed rule was not predicated on a legal distinction between common defense and security issues versus health and safety, but primarily on the pragmatic reason of relief from the additional onus of the NSTS on our program.

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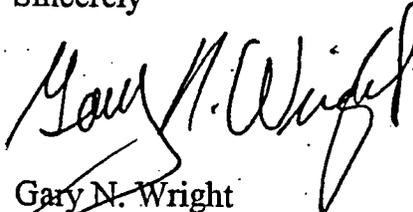
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We also submit that the Increased Control efforts that the states have assumed and are performing exceptionally well, as reported in the referenced document, have resulted in a substantial increase in costs to our program, and, for which no additional funding has been provided. Compounding this with the additional burden of the NSTS is unacceptable. NRC estimated that NSTS will add only "one-hour" to the inspection time, and asserted that the NSTS will be limited to IAEA category 1 and 2 licensees. We believe the time estimate is underestimated, as was the case with the 274(i) inspection program. In addition, we believe the NSTS requirement will expand over time to include IAEA categories 3 and possibly 4, which comprise the bulk of our licensees. In fact, there has already been some discussion by NRC representatives concerning the possibility of including categories beyond category 2.

We recommend that as NRC conceives, develops and adopts new national requirements, that funding also be considered as part of the implementation plan. Whether the basis for the NSTS changes to "health and safety" as currently proposed or remains "common defense and security," either NRC or the Agreement States will be assuming the additional burdens of the programs in the 34 Agreement States. These additional burdens are not trivial and must be funded to ensure success. The 274(i) Agreement used for the SGI-M inspections is an example of a successful implementation of national requirements accompanied by a funding mechanism. This system worked very well for the benefit of all agencies and the nation, and could be used for the NSTS and should have been used for the Increased Control efforts assumed by the Agreement States.

In conclusion, the Division recommends the authority basis for the NSTS remain as "common defense and security" as originally proposed. NRC will then have total control over its national program, with little impact on the Agreement States. This assumes that the Agreement States will have read-only access to the NSTS to help NRC ensure the veracity of the data submitted by Agreement State licensees. Thank you for the opportunity to comment on this important matter and please contact me at (217) 785-9868 if you have any questions.

Sincerely



Gary N. Wright  
Assistant Director

cc: Jim Lynch, Region III. State Agreements Officer