

EDO Principal Correspondence Control

FROM: DUE: / /

EDO CONTROL: G20060913
DOC DT: 10/25/06
FINAL REPLY:

Peter R. Smith
New York State Energy Research
and Development Authority

TO:

Chairman Klein

FOR SIGNATURE OF :

** GRN **

CRC NO: 06-0566

DESC:

Continued Regulation of Radium and Certain Other
Radioactive Materials

ROUTING:

Reyes
Virgilio
Kane
Silber
Johnson
Cyr/Burns
Collins, RI

DATE: 11/07/06

ASSIGNED TO:

CONTACT:

FSME

Miller

SPECIAL INSTRUCTIONS OR REMARKS:

For Appropriate Action.



New York State Energy Research and Development Authority

Vincent A. DeForio, Esq., *Chairman*

Peter R. Smith, *President*

Toll Free: 1 (866) NYSERDA

www.nyserdera.org • info@nyserdera.org

October 25, 2006

Dale E. Klein, Chairman
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Klein:

As State Liaison Officer, I am writing in response to your letter of August 18, 2006 to Governor George E. Pataki requesting information about New York's plans for the continued regulation of radium and certain other radioactive materials. A provision of the Energy Policy Act of 2005 expanded the definition of byproduct material in the Atomic Energy Act of 1954, as amended (AEA), thereby expanding the authority of the U.S. Nuclear Regulatory Commission (NRC) to regulate these materials.

New York State has been regulating these materials for the purpose of protecting public health and safety and the environment for more than 50 years under State law. The New York State Departments of Health and Environmental Conservation, and the New York City Department of Health and Mental Hygiene, are the agencies responsible for regulating the possession, use and disposal of radioactive materials in this State. Without question, New York State intends to continue to regulate these materials, and its programs will continue to ensure the protection of public health and safety. At this time, New York does not see the need to amend the State's regulatory agreement with NRC to simply continue implementing the programs we already have in place. The "certification" option outlined in your letter provides the most efficient path to satisfying NRC's new regulatory mandate with the least disruption of ongoing New York regulatory programs.

We look forward to receiving the additional guidance and information on NRC's transition plan and our radiation control program directors will be working closely with your staff to ensure an orderly and efficient transition process. It is important for NRC to recognize, however, that New York State has been effectively regulating these materials for many years without NRC support or oversight, whereas NRC is only now initiating a complementary regulatory program. In this regard, we expect to be provided the flexibility to continue the current implementation of our radioactive material regulatory program and not be held to any arbitrary standard for compatibility or otherwise be precluded from implementing the programs in the manner that has so long proven successful.

If you have any questions on this matter, please feel free to me or Jack Spath of my staff.

Sincerely,

Peter R. Smith, President and CEO

cc: Janet Schlueter, Director of the Office of State and Tribal Programs, NRC
Jack Spath, NYSERDA

Main Office

Albany

17 Columbia Circle
Albany, NY 12203-6399
Toll Free: 1 (866) NYSERDA
Phone: (518) 862-1090
Fax: (518) 862-1091

West Valley Site

Management Program

10282 Rock Springs Road
West Valley, NY 14171-9799
Phone: (716) 942-4387
Fax: (716) 942-2148

New York City

485 Seventh Ave., Suite 1006
New York, NY 10018
Phone: (212) 971-5342
Fax: (212) 971-5349

Buffalo

617 Main Street, Suite 105
Buffalo, NY 14203
Phone: (716) 842-1522
Fax: (716) 842-0156