



State of Utah
Department of
Environmental Quality

Richard W. Spratt
Executive Director

Division of Radiation Control
Dane L. Finerfrock
Director

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

July 17, 2007

Janet R. Schlueter, Director
Mailstop OWFN, 8 – F24
Division of Materials Safety and State Agreements (DMSSA)
Office of Federal and State Materials and Environmental
Management Programs (FSME)
U.S. Nuclear Regulatory Commission (NRC)
Washington, D.C. 20555

Dear Ms. Schlueter:

I am writing in response to your correspondence of June 21, 2007 to Agreement States requesting information about legal impediments to implementing Section 652 of the Energy Policy Act. That section amends Section 149 of the Atomic Energy Act to require fingerprinting of certain personnel at licensed facilities.

The State of Utah has no statutory or regulatory prohibition preventing the implementation of the fingerprinting requirements, but there are several practical issues that I would like to bring to your attention that I hope will help impact the way these requirements are implemented.

Implementing the requirements

The State of Utah urges the NRC to take primary responsibility for implementing necessary requirements. Specifically, as result of the fingerprinting and background checks, the NRC and not state programs should determine that information provided for employees or other persons who have unescorted access to the facility or access to safeguards information is adequate. If the NRC is satisfied with the information submitted, and does not take any action to prevent an individual from having access, the NRC would then provide the licensees or individuals with evidence of compliance, such as a certificate that can be placed in facility records to which we have access. Agreement States, in the course of their ordinary inspections would determine who has access, check records, and take appropriate enforcement action if the records are incomplete. Alternatively, States could require demonstration of compliance at the time of licensing or, in the first instance, at a time specified in any order issued.

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We do not read Section 652 of the Energy Policy Act to allow or require an Agreement State to make a determination about the adequacy of records supplied, or the appropriateness of a specific individual that a licensee has proposed to have working in sensitive areas. If the State of Utah, rather than the Commission, is required to make either of these determinations or enforce the NRC's decisions, our job becomes significantly more difficult and the cooperation and information we would require from the Commission in order to defend our decisions would be substantial.

Order authority and license modification

We would expect to implement the requirements by issuing an order to all applicable licensees that would amend their licenses. We may also choose to amend our rules to simplify implementation of the requirement. Rule amendment would take approximately 90 days. Although either of these decisions may be challenged, we are confident they would be upheld given the requirements of federal law.

Fee collection

If the fingerprinting program is implemented by NRC as described above, then the State of Utah would not collect fees, but would simply ensure that the appropriate evidence of compliance is provided on site or in an application. If Utah is required to implement the program and collect fees, we would be unable to do so until approximately April 2008, at the earliest, since implementing new fees requires legislative approval.

Other practical problems

We have learned that in the State of Utah, local law enforcement officers will take fingerprints and will ordinarily require identification of the person being fingerprinted. But those requirements may vary from jurisdiction to jurisdiction, and the vigor of their application certainly will. We also learned that generally the law enforcement agency will simply return the completed fingerprint card to the person requesting fingerprinting, raising obvious concerns about chain of custody and certainty of identity.

It is likely that we could work with the Utah Department of Public Safety's Bureau of Criminal Investigation to ensure that fingerprints are taken in an appropriate manner and sent directly to the NRC, but there may also be practical problems with that approach since that Bureau is currently facing inadequate funding, and therefore a significant problem with timeliness, in performing all of its work.

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Please feel free to contact me or my legal counsel about this response. I may be reached at (801) 536-4250. My counsel is Laura Lockhart and she may be reached at (801) 366-0283.

Sincerely,

A handwritten signature in black ink, appearing to read "Dane Finerlock". The signature is written in a cursive style with a large initial "D".

Dane Finerlock, Director
Utah Division of Radiation Control