

Rulemaking Comments

From: Clayton Bradt [dutchbradt@hughes.net]
Sent: Sunday, October 03, 2010 12:16 PM
To: Rulemaking Comments
Subject: Docket ID: NRC-2008-0120

DOCKETED
USNRC
October 4, 2010 (10:30am)
OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

I would like to submit the following comments regarding the proposed rule. They specifically relate to Section V. of the Supplementary Information: Agreement State Compatibility.

The Commission states that certain provisions of the proposed rule would be matters of mandatory compatibility between the NRC and the Agreement States. This assertion has no statutory basis. The Atomic Energy Act contains no provision requiring an Agreement State to maintain regulations compatible with those of the Commission. The Commission may *request* compatibility by the states but cannot *require* it. According to the Commission's own Office of General Counsel:

"Section 274 authorizes the relinquishment of Federal authority and responsibility. It does not establish a program under which the States merely inspect against and enforce Federal standards. Section 274 contains no requirement that compatibility be maintained by the States. Nor does the statute authorize the [NRC] to terminate or suspend an agreement on any other ground other than that the action is required to protect the public health and safety. Although it is readily apparent that the turnover of responsibility will work satisfactorily only if Federal and State regulatory programs are compatible, the section reflects Congressional confidence that such compatibility will be achieved through cooperation. A unilateral power to require compatibility would appear to be inconsistent with both the nature of the program established and the underlying philosophy of the statute." (Atomic Energy Commission General Counsel, May 25, 1963, AEC-R 101/2 page 4. Emphasis added.)

It should be noted that none of the provisions of the Atomic Energy Act upon which Counsel relied in formulating its conclusions in 1963 have been changed by subsequent amendments to the act. This characterization of the nature of the Agreement State program remains as valid today as it was when written.

To support its assertion of mandatory compatibility on the part of the Agreement States, the Commission references its own "Policy Statement on Adequacy and Compatibility" (62 FR46518; September 3, 1997). That document was vigorously criticized at the time of its proposal by the State of New York, and has subsequently been demonstrated to be based on tendentious constructions of the statutory language and misrepresentations of the recorded intent of congress. (See "Compatibility, Cooperation and the Atomic Energy Act", Clayton Bradt, CHP, NYS Dept. of Labor; in Proceedings of the Organization of Agreement States Meeting, October 6, 2005.) Furthermore, the Commission has itself stated that this policy statement cannot be considered as establishing any legally binding requirements upon the states:

"This Policy Statement is intended solely as guidance for the Commission and the Agreement States in the implementation of the Agreement State program. This Policy Statement does not itself impose legally binding requirements on the Agreement States".("Policy Statement on Adequacy and Compatibility" (62 FR46518; September 3, 1997)

The Commission therefore may request the Agreements States to implement regulations compatible with the proposed rule, but if it wishes to guarantee consistency it's only legal option is to implement the requirements under its authority to protect the common defense and security.

Thank you for this opportunity to comment.

Clayton J. Bradt

72 Zabel Hill Rd.

Feura Bush, NY 12067

dutchbradt@hughes.net

Received: from mail2.nrc.gov (148.184.176.43) by TWMS01.nrc.gov
(148.184.200.145) with Microsoft SMTP Server id 8.1.393.1; Sun, 3 Oct 2010
12:16:20 -0400

X-Ironport-ID: mail2

X-SBRS: 3.9

X-MID: 26609200

X-IronPort-Anti-Spam-Filtered: true

X-IronPort-Anti-Spam-Result:

AIAGAB9JqExAYiomi2dsb2JhbACBUoFLnj56AQEBCgsKGCKvapEwgSKDMXQE

X-IronPort-AV: E=Sophos;i="4.57,275,1283745600";
d="scan'208";a="26609200"

Received: from smtprelay0038.b.hostedemail.com (HELO
smtprelay.b.hostedemail.com) ([64.98.42.38]) by mail2.nrc.gov with ESMTP; 03
Oct 2010 12:16:20 -0400

Received: from filter.hostedemail.com (b-bigip1 [10.5.19.254]) by
smtprelay04.b.hostedemail.com (Postfix) with SMTP id 7C91152E31C6 for
<rulemaking.comments@nrc.gov>; Sun, 3 Oct 2010 16:16:19 +0000 (UTC)

X-Panda: scanned!

X-Session-Marker: 64757463686272616474406875676865732E6E6574

X-Filterd-Recvd-Size: 5043

Received: from webmail06 (imap-ext [64.98.36.5]) (Authenticated sender:
dutchbradt@hughes.net) by omf05.b.hostedemail.com (Postfix) with ESMTP for
<rulemaking.comments@nrc.gov>; Sun, 3 Oct 2010 16:16:19 +0000 (UTC)

Received: from 67.142.130.47 ([67.142.130.47]) by webmail06 (Webmail) with
HTTP; Sun, 3 Oct 2010 16:16:19 +0000 (GMT)

Date: Sun, 3 Oct 2010 16:16:19 +0000

From: Clayton Bradt <dutchbradt@hughes.net>

To: rulemaking.comments@nrc.gov

Message-ID: <1516044825.379522.1286122579240.JavaMail.mail@webmail06>

Subject: Docket ID: NRC-2008-0120

MIME-Version: 1.0

Content-Type: text/html; charset="UTF-8"

Content-Transfer-Encoding: quoted-printable

X-Mailer: Webmail

X-Originating-IP: [67.142.130.47]

Return-Path: dutchbradt@hughes.net