

THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

JOSHUA R. DIAMOND  
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN  
CHIEF ASST. ATTORNEY GENERAL



STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
280 STATE DRIVE – HC2N  
WATERBURY, VT  
05671-2080

TEL: (802) 241-0189  
FAX: (802) 241-0214

<http://www.ago.vermont.gov>

June 5, 2018

Andrea L. Kock, Acting Director  
Division of Material Safety, State, Tribal and Rulemaking Programs  
Office of Nuclear Material Safety and Safeguard  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Ms. Kock:

This document addresses your letter dated December 18, 2017, and its enclosed comments on Section 4.1 and 4.2 of the Draft Vermont Application for an Agreement Dated September 2017. Specifically, NRC requested this letter to provide the Department's response through the Attorney General's Office on three comments numbered 2, 6, and 13 from section 4.1 – Legal Elements, regarding the statutory language adopted by the Vermont General Assembly in Act 82 (2016). Act 82 grants the State the authority to seek and enter into agreement with the NRC. As it has been previously explained, the Department does not have the ability or authority to change the language in the statute. This letter will clarify the Department of Health and the Office of the Attorney General's specific interpretations.

Comment #2:

The NRC's comment raised concern that language found in 18 V.S.A. § 1653 (b)(1) stating that "[a] rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC except as the Commissioner determines is necessary to protect public health," was overly broad and risked the Commissioner overriding an NRC requirement with a compatibility category B designation.

The Department recognizes NRC's exclusive authority over compatibility category B designations and has no intention of overriding that authority. The language of concern is intended to preserve the Department's current authority in rule to regulate x-ray and other radiographic diagnostic equipment used by physicians, dentists and other health professionals, occupational sources of radiation, and the radiation exposure values at the site-boundary of the Vermont Yankee Nuclear Power Station (VYNPS). The Department maintains one unified rule for radiation protection, which will include the existing provisions and the adopted NRC provisions, that the NRC will have an opportunity to review prior to the adoption of the final rule.

Comment #6:

In 18 V.S.A. § 1653 (b) the term "consistent" is used in the language, "[a] rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC. . ." The NRC has requested to amend the statute to replace the term "consistent" with "compatible" or provide clarification on the interpretation of

this provision. The Department's intent is to interpret the term "consistent" in the same way as the NRC interprets the term "compatible."

Comment #13:

The NRC has raised concern with 18 V.S.A. § 1653(c), which states that "this section does not confer authority to regulate materials or activities reserved to the NRC under 42 U.S.C. § 2021 (c) and 10 C.F.R. Part 150." The primary stated concern is that other parts of Title 10 of the C.F.R. are not also explicitly reserved to the NRC.

The State of Vermont does not intend to regulate any activities or materials reserved solely to the NRC under Title 10. Vermont's statute at 18 V.S.A §1653 (a) outlines the authority for the state to seek and enter into an agreement only with respect to "byproduct, source, and special nuclear materials." The specific provisions of Title 10 the State will adopt by reference are clarified and distinguished in the proposed rule.

Please contact me if I can be of further assistance with this.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lillian Colasurdo".

Lillian Colasurdo  
Assistant Attorney General  
Vermont Department of Health