

STATE OF ARIZONA
ATOMIC ENERGY COMMISSION

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January 23, 1980

John F. Ahearne, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Ahearne:

The purpose of this correspondence is to reaffirm the states belief in the Agreement State program and to make Congress, Governors and citizens aware of its values. At the NRC Agreement States meeting in Washington, D.C. on October 3-5, 1979, lengthy discussions ensued relative to the future of the NRC/State Agreement program. An Ad Hoc Committee was appointed consisting of Mr. John Vaden (Nevada), Mr. Aubrey Godwin (Alabama), Mr. Charles Hardin (Kentucky), and Mr. Charles Tedford (Arizona) to develop an affirmative position paper on this subject. Mr. Charles Hardin, the initial Chairman of the Committee, resigned from the State Agreement program and the Chairmanship was assigned to me.

Based on the aforementioned Ad Hoc Committee's evaluation of the Agreement State program directors' submissions by the majority (18) of the 26 Agreement States, the enclosed "Need to Reaffirm the Agreement State Program" includes comments, concepts and recommendations addressed in the following five subject areas:

- Consideration I - The advantages of an Agreement State administering a radiation health and safety program rather than the NRC.
- Consideration II - The Agreement State program areas requiring improvement.
- Consideration III - The adequacy of the criteria used by the NRC to evaluate the Agreement State program.
- Consideration IV - The manner and frequency of the NRC review of the Agreement State program.
- Consideration V - The level and organizational location of the NRC administration of the Agreement State program.

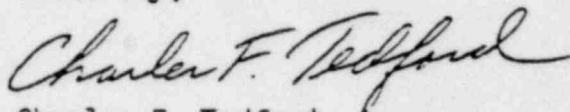
In summary, we believe that although specific areas exist where improvements are required in the State Agreement program, the NRC's State Agreement program has proven to be a highly valued resource to the states' radiation safety program.

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It is respectfully requested that the enclosed comments be given due consideration toward the support of a very successful program that has reduced dual regulation.

If I may provide further assistance, please do not hesitate to advise me accordingly.

Sincerely,



Charles F. Tedford
Executive Director

CFT:cap
Enclosure

cc: Honorable Gary Hart
Honorable Morris Udall
Honorable John Dingell
Honorable Toby Moffett
Mr. Wayne Kerr, U. S. Nuclear Regulatory Commission
Mr. Dave Lacker, Chairman, Conference of Radiation Control
Program Directors
Radiation Control Program Directors (26 Agreement States)

A NEED TO REAFFIRM
THE AGREEMENT STATE PROGRAM

In 1959, the Atomic Energy Act was amended by adding Section 274, entitled "Cooperation with the States". This change was made by Congress to allow states to regulate users of radionuclides within their borders under an Agreement with the U. S. Atomic Energy Commission (AEC). Persons in many states using radium, accelerator-produced radionuclides and reactor-produced radionuclides were subject to regulation by both the state and the AEC. A primary purpose of Section 274 was to prevent dual regulation with its resultant conflicts and confusion to the user by inspection from two agencies.

Since Section 274 was passed, there have been many instances where dual regulation has occurred or has been attempted and resolved by negotiation. The first challenge occurred in 1964 when the Department of Labor (DOL) sponsored a bill that passed Congress and provided DOL with the authority to regulate the occupational exposure to radiation of persons engaged in industry. The Agreement States led by the Attorney General of the state of Texas, as a result of formal hearings, negotiated with DOL and AEC until DOL agreed to accept AEC's regulation of its licensees and AEC's periodic certification of the Agreement State programs as adequate in meeting DOL regulatory requirements.

Since 1964, there have been many new federal agencies formed and many have developed regulations concerned with radiation. The Occupational Safety and Health Administration, the National Institute of Occupational Safety and Health, and the Environmental Protection Agency all have regulations concerned with radiation control or standards.

Dual regulation has been particularly prevalent concerning uranium mills. The Uranium Mill Tailings Radiation Control Act of 1978 was interpreted by the Nuclear Regulatory Commission (NRC) to mean that NRC would have to license tailings in Agreement States even though the state also licensed the tailings. This act was later amended by Congress, and the principal authors stated that dual regulation was not their intention. The Federal Mine Safety and Health Act of 1977 states that uranium mills are subject to regulation by the Mine Safety and Health Administration. NRC is seeking to mitigate that situation by developing a memorandum of understanding to perform joint inspections. The future role of the Agreement States in this program is not clear.

During the last twenty years, the Agreement States have increased in number until there are now 26. They regulate about 11,800 radioactive material licenses, while NRC regulates about 8,000 licenses. The Agreement States have done a good job in radiation control as evidenced by annual determinations of program adequacy by NRC on-site inspections.

It is time to broadcast the lessons learned from the Agreement State program:

1. State programs can competently administer regulatory authority transferred to them from the Federal Government.

2. Dual regulation of radiation can be resolved when the Congress and federal agencies are aware of the presence of existing radiation control programs in the states.
3. Special attention by NRC to the Agreement State program by establishment of the Office of State Programs in 1976 has been instrumental in the success of the program.
4. The principles of the Agreement State program should be applied to other federal authority which can be transferred to a state both in radiation control and in other areas.

There is a need to reaffirm the states belief in the Agreement State program and to make Congress, Governors and citizens aware of its values. At the NRC Agreement States meeting in Washington, D.C. on October 2-5, 1979, there were lengthy discussions held relative to the future of the NRC/ State Agreements program. An Ad Hoc Committee was appointed consisting of Mr. John Vaden (Nevada), Mr. Aubrey Godwin (Alabama), Mr. Charles Hardin (Kentucky), and Mr. Charles Tedford (Arizona) to develop an affirmative position paper on this subject. Mr. Charles Hardin, the initial Chairman of the Committee, resigned from the State Agreement program and the Chairmanship was delegated to Mr. Charles Tedford.

Based on the aforementioned Ad Hoc Committee's evaluation of the Agreement State program directors submissions by the majority (18) of the 26 Agreement States, the following comments, concepts and recommendations are forwarded as germane considerations:

Consideration I - The advantages of an Agreement State administering a radiation health and safety program rather than the NRC:

- (1) An Agreement State program provides readily accessible response and answers to the licensees and the public for a broad spectrum of matters relating to the protection of the health and safety from ionizing radiation.
- (2) The Agreement State program is considered more cost effective when compared to similar services offered and provided by the Federal Government.
- (3) An Agreement State program can offer improved protection to the public's health and safety by serving as a focal point to cope with radiation incidents, accidents and emergencies. The staff and equipment are immediately available to respond to the state licensee's requirements. In addition, the state personnel are familiar with the specific sites due to a more frequent inspection program.
- (4) Finally, an Agreement State program possesses the capability to express an independent opinion regarding radiation control issues, e.g., waste disposal. It also allows for adjusting procedures and policies to more closely fit the local need. The NRC should provide additional benchmarks and guides which provide regulatory program consistency, e.g., acceptable soil contamination levels.

Consideration II - The Agreement State program areas requiring improvement:

- (1) The Agreement States indicate funding as a vital area of need. Licensing and inspection fees should be considered as a viable alternative and implemented in all Agreement States as the initial method of improving program funding. In special cases where an Agreement State licensee provides unique regional and national services and the licensing and inspection costs for such a licensee are unusual, the NRC should provide special funding. Additional funding beyond the license fee should be considered by NRC when their fee schedule is not keeping up with inflation. Each Agreement State should annually review its fee schedule to consider inflation.
- (2) Relative salary scales for the highly technical staff of the state radiation control programs is felt by many program directors to have a significant effect on the ability of the state to conduct an effective radiation control program. The field of health physics is very competitive and those state administrative organizations responsible for approving salary levels should be made aware of this problem. Salary levels which are not competitive with other employment alternatives, both government and nongovernment, may result in excessive turnover of staff with the resultant loss of trained staff, increased training costs (for both the state and the NRC), and a general reduction in efficiency and effectiveness. The NRC should determine and report the salary structures of Agreement States and compare the findings with similar NRC, industrial and national laboratory positions.
- (3) Through the further issuance of inspection memoranda, guides, continuing training in inspection, licensing, health physics and special subjects, the NRC and Agreement States should achieve uniformity of regulatory programs. It should be noted that NRC training programs are singularly outstanding in the federal arena.
- (4) The NRC Agreement State program should provide clear procedures for obtaining specialized technical assistance and equipment in a prompt manner. Further, when the NRC proposes to an Agreement State that unusual actions be taken, such proposals should indicate the specific health and safety considerations involved.
- (5) In reviewing an Agreement State program, more emphasis should be placed on accompaniment of field inspectors addressing the protection of the public health and safety, without undue emphasis on the adequacy of the paperwork.
- (6) When significant problems are apparent in an Agreement State, the NRC should not hesitate to bring this to the attention of top state officials and strongly support adequate corrective measures.

Consideration III - The adequacy of the criteria used by the NRC to evaluate the Agreement State program.

- (1) The consensus of the Agreement States is that the present criteria are adequate. We would suggest as in the improvement considerations above, the Governor be advised of significant findings which place the state program in jeopardy.

Consideration IV - The manner and frequency of the NRC review of the Agreement State program:

- (1) The Agreement States believe that an annual review is adequate. We all recognize and accept that if an Agreement State is experiencing significant problems, the NRC should not wait a year to assure corrections. Most Agreement States find the present review process helpful and improves their program.

Consideration V - The level and organizational location of the NRC administration of the Agreement States program:

- (1) The Office of State Programs should remain an NRC operational unit since it has been performing efficiently in this position. The office effectively coordinates the programs of the NRC regulatory, inspection and licensing activities with the Agreement States. It is contraindicated that the Office of State Programs should be moved to another organizational unit of NRC which has more narrowly defined functions and responsibilities.
- (2) In an Agreement State the administrative location of the program should be structured so that it can have direct input to the Governor and Legislature on the technical aspects of radiation protection.

The aforementioned comments indicate that specific areas exist where improvements could be made in the State Agreement program. However, to quote one state radiation program director, "The NRC's manner in conducting periodic reviews of state programs has from our point of view been both professional and constructive. It might be argued that a specific point or detail may have been overemphasized or underemphasized by an individual NRC staff member, but the overall conduct of the review has been balanced and correct."

In closing, the NRC's State Agreement program has proven to be a highly valued resource to the states' radiation health and safety program.

January 10, 1980