



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 11 1994

OFFICE OF
AIR AND RADIATION

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Bernero:

This letter is in response to your proposal of December 17, 1993 that NRC and EPA engage in a participatory process regarding NRC's regulatory program for facilities subject to the Clean Air Act. The purpose of this process would be to gather information on the most effective way to make changes in the NRC program to provide a defensible basis for EPA to proceed with rescission of 40 CFR 61, Subpart I, for NRC and agreement state licensees not engaged in nuclear power production.

Before discussing your proposal, I want to state very clearly that EPA would not be interested in a process which would revisit the Administrator's decision that modifications of the NRC program are needed before EPA can proceed with rescission of Subpart I. EPA has already made a firm determination that it cannot make the threshold finding required by CAA Section 112(d)(9) ("the Simpson Amendment") until specific problems with the NRC regulatory program have been resolved. Rather, any process must be focused on gathering information and ideas concerning the best approach to correcting these problems, so that EPA may rescind.

We understand the NRC proposal to be as follows. In light of EPA's decision that NRC must make certain changes to its regulatory program before EPA may rescind Subpart I for licensees other than nuclear power reactors, NRC proposes a public participatory process to discuss the advantages and disadvantages of various options to strengthen the NRC program. Specifically, the purpose of the process will be to discuss options and to develop a strategy to address EPA's concerns. One problem is that NRC's program does not assure that emissions will be consistently and predictably below 10 mrem/y, and that NRC will be able to require reductions when they are not. Another serious problem was recently reported in the 1993 study by the General Accounting Office which found deficiencies in over half of the NRC Agreement State programs and found that NRC had no mechanism to revoke the Agreement State status of States having inadequate or incompatible programs.

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EPA believes that a properly focused participatory process could be a constructive way to forge a consensus on the best approaches to strengthening the NRC program. There certainly is more than one possible approach to resolving each of the EPA concerns regarding the present NRC program. Although affected licensees, states, and public interest organizations have previously had an opportunity to comment on the EPA proposal to rescind, they have not been consulted yet concerning the specific modifications of the NRC program which are necessary to facilitate rescission by EPA. A participatory process could assist NRC and EPA in selecting a set of modifications to the NRC program which both resolves the EPA concerns and minimizes any disruptive effect on licensees and state programs. Any subsequent rulemaking would be informed by the public dialogue which preceded it.

I believe that a participatory process will delay the path to rescission by a year or more. There would be a significant additional workload for both EPA and NRC during the first half of 1994 and significant costs associated with the participatory process (facilitator, meeting rooms, court reporter, transcripts, etc.). While I am willing to provide the staff time needed to support this project, I have no funds available for it.

We understand that the participatory process would involve approximately 12 participants, with representatives from EPA, NRC, Agreement States and Non-Agreement States, environmental/citizen groups, and industry. The first meeting would be convened in April, 1994, and the last meeting concluded near the end of May, 1994.

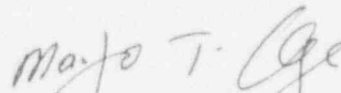
In order for the proposed 4 days of meetings to be productive, it will be necessary for EPA and NRC to work together to assure that the scope of the discussions is properly focused. EPA will need to provide a written description of the specific deficiencies in the NRC program which it believes preclude immediate rescission. EPA and NRC should also agree on a written description of the specific options for changes in the NRC program which will be the focus of the discussions. Each option to be discussed should have certain characteristics: (1) the option should be clearly designed to address one of the specific concerns identified by EPA, (2) the option should be one that NRC is at least willing to consider adopting, and (3) the option should be consistent with the governing legislation.

Regarding the participants, NRC is suggesting 12 members. Discussions between our staffs have acknowledged the need to have adequate representation of all the affected parties. Having four people from states could make the state influence out of balance with the rest of the participants, and could result in disagreement among these four participants. I suggest we may want to

limit the states to two representatives, one agreement state and one non-agreement state. One method that might ensure appropriate representation would be to request that the CRCPD select representatives.

I hope this information is useful to you in planning the participatory process regarding NRC's regulatory program for facilities subject to the Clena Air Act. I look forward to our cooperation in this effort.

Sincerely,



Margo T. Oge
Director, Office of Radiation
and Indoor Air