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DEPARTMENT OF HEALTH

DIVISION OF RADIATION PROTECTION

Airdustril Center, Bldg. 5 • P.O. Box 47827 • Olympia, Washington 98504-7827

OFFICE OF SECRETARY  
DOCKETING & SERVICES  
BRANCH

October 14, 1994

Secretary  
Attention: Docketing and Services Branch  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555

To the Commission:

This is in regard to 59 FR 37269, the Commission's draft statement of policy on adequacy and compatibility for NRC and Agreement State Radiation Control Programs. The state of Washington opposes the draft policy statement as currently proposed. While there are many good elements to the draft policy statement, it is seriously flawed in its treatment of the States and in its development of the term "compatibility" to mean essentially "identical to NRC".

The terms "adequate" and "compatible" were not defined in section 274 of the Atomic Energy Act most likely because the intended meaning of these terms was well understood at the time. That is to say, they should have their dictionary meaning. According to Webster's New World Dictionary, "adequate" means "equal to a requirement or occasion; sufficient; suitable". The draft policy statement refers to "adequate" as an "acceptable level" which comports well with the dictionary definition. On the other hand, "compatible" is defined as "capable of living together harmoniously or getting along well together; in agreement". Given the history of conflicting regulations which prompted section 274 it is clear that "compatible" probably carried with it the connotation of "does not conflict". In any event, the implication that "compatible" requires program elements to be "essentially identical" was not, we believe, intended and is not warranted.

The other major flaw in the policy statement is treating the Agreement States as an interested party or constituent rather than as a co-regulator. Section 274g is especially clear in directing the Commission "to cooperate with the States in the formulation of standards ... to assure that State and Commission programs ... will be coordinated and compatible". It does not say "impose your will upon" or "consult, if you feel like it" or "follow the Administrative Procedures rules for notifying the State, the public, etc."; it clearly says "cooperate with". This recognizes there are two different sovereign governments involved here, both

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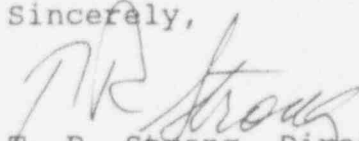
regulating the same area, that should work as "partners"; not one dictating to the other. The draft policy statement inappropriately requires the Agreement States to become clones, or maybe even slaves, of NRC.

The draft policy statement should be referred to the Organization of Agreement States for a re-write. There should be no hurry to cast in concrete a "new" policy that potentially drives further a wedge in the relationship between NRC and the Agreement States! The current "policy" may also be flawed but please don't make matters worse by running rough-shod over Agreement State concerns. The background statement to the draft policy notes that "The guiding concept over the years since the beginning of the Agreement State program in the area of compatibility has been to encourage uniformity to the maximum extent practicable while allowing flexibility, where possible, to accommodate local regulatory concerns." This may have been a reasonable beginning but as the background statement also notes: there has been a slow evolution over the life of the Agreement State Program which has brought us to where "compatibility means identical". As with any evolutionary process each step seemed logical at the time, and it has taken time to recognize that where we are now is NOT WHERE WE WANT TO BE. Unfortunately, the Federal Register notice and the draft policy statement serve mostly to justify the concept that "compatibility means identical" rather than "cooperate with the States" in determining how standards will be coordinated and not conflict as they did at one time prior to the adoption of section 274.

The Commission's policy should focus on determining "adequacy", and should include a mechanism for government to government cooperation which will assure that State governments' voices are effectively heard by the Commission. As "partners" our comments should be given GREATER weight than those of NRC licensees, environmental groups, or the public in general. Certainly, as "partners" we should have an equal say along with the Commission in determining which specific program elements, procedures and regulations constitute "adequacy". Achieving consensus should be the operative phrase.

Thank you for the opportunity to comment. Selected additional specific comments are attached.

Sincerely,



T. R. Strong, Director  
Division of Radiation Protection

Enclosure

cc: Richard L. Bangart, OSP  
Agreement States

59 FR 37269  
DRAFT STATEMENT OF POLICY

II. E. Specific Questions:

1. Agreement States should be permitted to establish more stringent requirements for their licensees under all circumstances. This includes the ability to establish stricter dose limits for particular classes of licensees. An adequate program is one that reaches a sufficient level of protection for the public. Stricter standards are "permitted" as long as the regulation does not conflict with NRC's "minimum" standard. Being more stringent does not automatically conflict.

2. The fourth criterion -- Assisting the Commission in evaluating the effectiveness of the overall national program for radiation protection -- is a nice goal but it should not be a mandatory factor in determining whether an Agreement State is "adequate" to protect the public. As with many features of this draft policy, the concept is worthy but the method of attaining your goal is not. The Agreement States are more than willing to help NRC, to provide information, to cooperate, but NOT "at gunpoint".

4. It is inappropriate to place any limits on the power of the State to preclude or, by exceptionally stringent regulations, effectively preclude a particular practice. The State is a Sovereign entity. We promulgate rules following administrative procedures that provide for citizen as well as industry input. Rules that preclude any particular practice will have been reviewed and deemed in the best interest of all the citizens of the State.

5. Criterion 3 of the compatibility criteria should be viewed as a "minimum" dose limit. The basic "units" should be the same but the numerical value could be more stringent. If one State wanted to implement 0.04 Sv instead of 0.05 Sv TEDE as the occupational limit that should be acceptable as meeting the minimum standard and certainly capable of protecting the public health. While we view it as highly unlikely for states to make these kinds of changes, it should not be NRC's role to punish the state by terminating its agreement for providing a greater level of public health protection than established by the NRC's minimum standards.

8. States should be allowed to establish more stringent standards for radiation-protection related release limits. While we doubt that very many states would do so, it is the principle involved here. What we do to protect our citizens is our business, not NRC's once an adequate -- minimum -- program has been established. The main concern should be whether the public is exposed to greater risk than allowed under NRC rule PERIOD.

III. A. 3. Compatibility should be aimed at ensuring that interstate commerce is not impeded (conflicting regulations), and that effective communication in the radiation protection field is maintained (definitions do not conflict). Minimum dose limits and related release limits should be viewed under "adequacy" as should information needed for the study of STATE trends. Information for a study of national trends should be a goal not a criteria.

III. B. 2. States have been in the radiation regulatory business for many years. We have considerable expertise and insight into local conditions. We should have a say in designating the requirements necessary for an "adequate" program. The point is: States are not unreasonable; we are willing to discuss and learn by the experience of others.

III. C. 2. A uniform manifest is a desirable goal and one that we certainly support. However, the compact host states should be able to require necessary information in whatever format we choose. As long as we agree, fine; but we should not be forced by an outsider!

III. C. 4. Event reporting consistent with NRC to provide that overall national perspective is a desirable goal. It should not be a mandatory criteria. Failing to report data to NRC does not compromise health and safety.

III. D. 4. Assisting the Commission in evaluating the overall national program is a worthy goal but not at the expense of state resources. This should not be a mandatory criteria. Also, the term "national interest" is used without specifying what it means or providing clear examples.