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Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
ATTN: Docketing and Service Branch

RE: 59 FR 40058
Draft Policy Statement on
Agreement State Program:
Compatibility Requirements

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Dear Madame or Sir:

These comments are submitted on behalf of the Pennsylvania-based Environmental Coalition on Nuclear Power (ECNP), a not-for-profit public-interest organization. ECNP is represented on the Pennsylvania State Low-Level Radioactive Waste Advisory Committee, but does not speak for the committee or the Commonwealth. Nonetheless, we have a stakeholder's interest in Agreement State Compatibility Requirements. The commenter, representing then the National Energy Committee of the Sierra Club, was an invited panelist in the NRC Staff's July 1993 workshop on this issue; and we have also recently attended as observers the NRC 1994 workshop for State Radiation Control Program Directors. We urge the Commission to give serious heed to our recommendations.

This issue has profound Constitutional significance for the relationships of the States and Federal government with respect to health, safety and environmental protection of the citizens of the nation and the states. We contend that the Federal government, in the forms of the Nuclear Regulatory Commission, Environmental Protection Agency, and Departments of Energy and Defense (NRC, EPA, DOE, DOD), has failed, in these fifty years of the atomic age, to provide first and foremost for the protection of the American people and the environment on which they depend. This failure lies in the Federal agencies having fostered the growth and continuation of nuclear energy technologies without adequately regulating themselves, one another, or their licensees, vendors, and contractors.

Resultant from these failures of their statutory missions to protect our citizens are thousands of sites contaminated with radioactive and other toxic materials and wastes rendering them a danger to present and future populations. They are both a short- and long-term burden upon States and Municipalities to oversee and pay for monitoring, restrictions, decontamination, revenue losses, and future damages. In repeated instances, the states have been placed in the position of clean-up or continuous monitoring of Federally-regulated sites, as well as sites that have been placed under the authority of Agreement States (AS). These, in turn, are frustrated in their regulatory control by NRC's preemption and compatibility requirements, or by failure of DOD and DOE to abide by State environmental and health and safety regulations. Indeed, the responsibility for "disposal" of radioactive wastes, which are generated primarily by facilities that are licensed and regulated by the NRC, was unceremoniously and deceptively dumped onto the States under the guise of misleadingly named "low-level" nuclear wastes that, in turn, were misrepresented to the Congress in 1980 as coming mainly from medical sources.

The States differ markedly in the number, distribution, activities, and geographic conditions of nuclear industries within their jurisdiction. Some Agreement State Program Managers are now requesting more authority, in order to

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set radiation protection standards and regulations that are more, but not less, restrictive than those of the Federal agencies. The Federal agencies, in turn, should be setting baseline national standards and regulations with which all must comply as the minimum requirements. NRC should grant States' requests for more State authority and control but appears unwilling to do so.

At 40059, the Commission asks for comment on its proposed categories of findings of adequacy for AS programs, on its process for suspension or termination of an AS program, and on use of 10 CFR Part 2, Subpart L for informal hearings on suspension or termination decisions rather than those detailed in sections V and VI of this FR notice. We commend the Commission for seeking public input at this early stage of policy modification but ask that the public suggestions and recommendations actually be incorporated, rather than ignored, in the final policy statement.

In its review of legislative intent in the Atomic Energy Act of 1954, as amended (Section II, at 40059), the staff fails to even mention the role, four decades ago, of the military in the development of nuclear weapons to meet 1950's Cold War demands for national security. The retention of Federal preemptive authority over radiological safety and radiation protection standards was, at least in part, in accordance with the maintenance of federal control of the military nuclear programs and the relationship of the commercial reactor programs to them. Only secondarily, we would claim, were the concerns for "uniformity" among the states, discussed at Section III.2 to III.4. Both have been outgrown over the years. If states are to be entrusted to administer radiation control programs, they should also be empowered to determine what levels of added safety and standards are appropriate to the needs of the people within each state, above and beyond the baselines set by the Federal agencies.

Similarly, the NRC's rightful concerns about the quality of state programs, discussed at Section III.1, can be met within a regulatory framework that permits the states to exceed the NRC's minimum requirements for an Agreement State program. We're all in favor of excellence, of minimization of complacency, and effectiveness in NRC's exercise of its oversight of Agreement States. However, the public, and the State Program Directors, may differ with respect to the adequacy of NRC or EPA standards for radiation protection.

So long as a state is able to satisfy the NRC's reporting requirements that it has indeed met radiation program quality requirements, there should be no barrier, no impediment raised by the NRC to an State's going beyond to provide an even higher level of radiation protection and safety for its citizens. For example, although the Federal agencies must comply with the National Environmental Policy Act, there is no Federal Constitutional provision that addresses environmental protection, or health and safety -- beyond, perhaps, Articles IX and X of the Bill of Rights. But the Constitution of the Commonwealth does contain a provision that sets forth our responsibility to leave to our descendants a clean, livable environment. Therefore, our State regulators, in order to be in compliance with the State Constitution, may find it necessary to require degrees of safety and stringency of standards that go beyond those of NRC or other Federal agencies.

The staff says as much at Section III.2: "The basic elements...include ability to ensure adequate protection of the public health and safety,... sufficient flexibility to accommodate local needs and conditions...." Since

some State Program Directors are asking for this authority to exceed NRC's requirements (as was emphatically voiced at the NRC's July 1994 annual workshop with the State Program Managers, the Commission should give it to them.

There would be little disagreement with the need for commonality of definitions and measurements. But, rather than attempting to bind the states to its often inadequate or antiquated standards and regulations, the Federal agencies should be leading the way in encouraging excellence, in rewarding states' concern to maximize the protection of their citizens. If a state concludes, from its own observations, inspections, or reading of the records that a power reactor is not performing satisfactorily to assure protection for that state's people, it should have the authority to step in to correct the failings. In the case of low-level radioactive waste management in Pennsylvania, for example, this principle is recognized: a Host Municipality's own inspector is authorized to close the regional LLRW disposal facility if it is not in conformity with regulations, and certain authorities are granted to the local government to assure safety. Less regulation, lower standards? No. But higher and better ones, yes, by all means.

Obviously, if a State Radiation Control Program is derelict in its duties or failing to meet NRC requirements, or worse, the Agreement State status should be reviewed, suspended, and/or revoked, depending on the severity, duration, and deleterious consequences of the failures. We can support the Commission's proposals to do so, and a process that assures ample opportunity for public participation.

I would add, however, that the street runs in both directions, and if the states find that the NRC is failing in its statutory obligations, or is intrepreting its authority in ways that a state has reason to believe may prove detrimental to the health and safety of its citizens or to the quality of its environment, then the NRC's regulatory authority should also be reviewed, suspended, or revoked. We would caution, moreover, that, for either a State Radiation Control Program or NRC regulation, the consequences of any serious failure of regulation that results in releases of radioactive materials or wastes into the biosystem are intolerably high. "Marginally acceptable" is, in the instance of any production or uses of nuclear energy or management of its wastes, unacceptable.

Sincerely,

Judith H. Johnsrud

Judith H. Johnsrud, Ph.D.
Director