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

To whom it may concern:

I am writing with regards to the request for comments concerning agreement state status, published in volume 56, #246, pp. 66457-66459 of the Federal Register, dated December 23, 1991. These comments are being written after the comment deadline, because notice of this rule was received in our office only a week or two ago. We hope that these comments will be considered in the record.

We will focus on one specific question: should the NRC allow states establishing agreement state programs to adopt more stringent standards than those adopted by NRC? As a policy matter, we believe that the answer to that question should be yes whenever possible. There should be a concrete and specified set of circumstances requiring national uniformity before negating the right of any state to regulate more stringently than the federal government has chosen to do. This is the fundamental federal principle on which this country was founded.

We are not arguing about what NRC is legally entitled to do. Since Northern States Power Company v The State of Minnesota, the courts have held that NRC does have the right to preempt state attempts to impose more stringent regulations. Rather, it is a question of policy: should the NRC do this?

Many decisions in the whole arena of nuclear regulation involve weighted judgments of cost vs. risk, cost vs. benefit, risk vs. benefit, etc. The NRC should -- must -- resolve these questions at some minimal level for the nation. States should then be allowed flexibility in imposing more, but not less, stringent regulations than those in effect at the federal level.

The rationale is simple: NRC retains the responsibility to assure the public health and safety even when delegating that responsibility to the states through the agreement state program. It is inconsistent to impose minimal performance criteria (e.g. dose limits) on operators on the basis that they are necessary to protect the public health and safety and then to allow states free reign to violate those limits.

Conversely, however, states should be allowed to determine -- especially in those areas where they have primary responsibility (e.g. low-level radioactive waste) -- that they prefer to set higher safety standards, to be even more protective of their citizens than other states have chosen to be.

Two areas are especially noted in the Federal Register notice, and stand out as areas where diversity makes a great deal of sense. The first is the deregulation of nuclear materials, the so-called "BRC" policy. Various states and

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localities have already passed laws re-regulating what the NRC policy statement would have de-regulated. This is a genuine and democratic expression of concern from citizens of various states; there is no good policy reason which justifies ignoring it. If the NRC intends to reintroduce its BRC policy, it should clarify that the right of states to maintain stricter regulation in this area will be respected.

The second area is perhaps even more straightforward. Federal law has made nuclear power and most other nuclear phenomena a federal, rather than a state issue. In the unique case of low-level radioactive waste, however, the federal government has given states responsibility for management and ownership of these materials. It is totally paradoxical to grant states this responsibility, on the one hand, while denying them the authority to implement their own policies on the other. Yet the class I compatibility rules currently in use effectively deny states any power whatever to re-examine crucial aspects of the low-level radioactive waste question, even those which have come under sustained questioning from a variety of quarters.

The agreement state program inherently keeps this question tightly focused. Agreement states cannot regulate nuclear reactors in any case. They are not in any sense "free agents" since the program must be accepted by NRC and periodically reviewed by NRC. Agreements spell out in detail exactly how the states intend to carry out their regulations. In short, the program itself is quite limited.

Specifically, we recommend a re-evaluation of the compatibility rules, with an eye towards maximizing the ability of states to determine their own regulatory systems whenever possible. Obviously, there are instances in which it is simply impossible to function with different (and even adjacent) states with radically different standards. These are the areas requiring class I compatibility, but we suggest that they are much narrower than the currently existing system would suggest.

Still more specifically, various states have either passed legislation requiring (PA) or made inquiries concerning (MI) their ability to set lower dose performance limits than 10 CFR Part 61. We believe that these are legitimate expressions of the public's desire to impose stricter regulation on their own facilities than the current federal regime. They are not scientifically anomalous either (cf. the 5 mrem limit established in Canada, based on 1×10^{-6} deaths and ICRP dose conversions). We believe that it is vitally important that States be given this permission, which the current compatibility programs denies them.

We welcome the Commission's decision to take another look at the agreement state program, and hope that it will consider revisions along the lines suggested above.

Sincerely,

John Greenberg