

EDO Principal Correspondence Control

FROM: DUE: 03/06/02 EDO CONTROL: G20020075  
DOC DT: 10/26/01  
FINAL REPLY:

William Sinclair  
Kathy Allen  
Organization of Agreement States

TO:

Chairman Meserve

FOR SIGNATURE OF : \*\* GRN \*\* CRC NO: 02-0082

Lohaus, STP

DESC:

ROUTING:

Review of Resolutions (1) Standing Compatibility  
Committee and (2) Requesting a Change of  
Compatibility Classification for Training and  
Experience Requirements in the Proposed Part 35

Travers  
Paperiello  
Kane  
Norry  
Craig  
Burns/Cyr  
Virgilio, NMSS

DATE: 02/13/02

ASSIGNED TO: CONTACT:

STP

Lohaus

SPECIAL INSTRUCTIONS OR REMARKS:

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

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~~To Kohaus, SIP~~

AUTHOR: William Sinclair (UT)

AFFILIATION: UT

ADDRESSEE: CHRM Richard Meserve

SUBJECT: Highlights discussions held at the meeting regarding Agreement State and NRC interactions

ACTION: Appropriate

DISTRIBUTION: RF

LETTER DATE: 10/26/2001

ACKNOWLEDGED No

SPECIAL HANDLING: OCM #9310

NOTES:

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~~EDC~~  
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**William Sinclair, Chair**  
**Pearce O'Kelley, Chair-Elect**  
**Kathy Allen, Past Chair**  
**Stanley Fitch, Secretary**  
**Kenneth Weaver, Secretary-Elect**

October 26, 2001

Chairman Richard Meserve  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852

Dear Chairman Meserve:

Thank you for providing the keynote address at the Organization of Agreement States annual meeting. Your address hit upon several issues that are important to both NRC and Agreement States. It was unfortunate that you were not able to attend the meeting, but we understand the need to change your travel plans in light of recent national events.

The main purpose of this letter is to highlight some discussions held at the meeting regarding Agreement State and NRC interactions. Overall, there was a feeling that our relationship has evolved from "us" and "them" to a more cooperative approach. Many of the presentations focused on what "we" can do to address particular situations. The establishment of joint NRC/OAS Working Groups was touted as success stories. We hope our interactions continue to be more cooperative in the future.

During the Business Meeting, two resolutions pertaining to the NRC were discussed and passed. Copies of the final resolutions are included with this letter.

The first resolution requests a change in the compatibility classification from Category B to Category C for training and experience requirements in the proposed 10 CFR 35. There was considerable discussion about transboundary implications related to training requirements. States and the NRC grant reciprocity to more portable gauge users than medical users, yet those training requirements are not identified as Category B. In fact, training requirements for portable gauge users are not even specified in regulations. They are addressed in licensing.

Although OAS was reminded that the NRC Commission has ultimate responsibility for determining compatibility categories, the OAS membership passed the attached resolution requesting that the compatibility for all training and experience requirements in the proposed Part 35 be changed from Category B to Category C.

The second resolution passed by the OAS also deals with compatibility, but is derived from the National Materials Program Working Group Report. This resolution calls for the establishment of a Standing Compatibility Committee consisting of both NRC and state personnel. Such a committee would be responsible for independently reviewing and proposing compatibility categories for proposed rules using Management Directive 5.9. This committee would not be limited to reviewing rules developed by NRC, but could also review rules drafted and proposed by a group of states on a Working Group, or from one of the CRCPD rule committees. In short, a standing committee would be better able to uniformly apply the compatibility criteria no matter who drafted a particular rule.

We recognize that you may have some questions about these particular resolutions. If so, we are willing to discuss them with you or your staff. We believe that these resolutions will help address some of the state's concerns regarding transboundary implications, and uniform application of compatibility categories for all rules.

At the end of the business meeting, elections were held for officers in the Organization of Agreement States. Terms now begin at the end of the annual meeting. Bill Sinclair (Utah) is now Chair, and Kathy Allen (Illinois) is Past Chair. We are jointly signing this letter as part of the transition. Pearce O'Kelley (South Carolina) is Chair-Elect, and Ken Weaver (Colorado) is Secretary-Elect. Alice Rogers (Texas- TNRCC) was unable to complete her term as Secretary, so Stan Fitch (New Mexico) will be Secretary for one year to complete the term.

We also voted on locations for upcoming meetings. We were very pleased that NRC has offered to host the annual meeting in fall 2002. This will give many NRC staffers a chance to stop in and listen to issues addressed during the meeting, and will also be an excellent opportunity for states to meet with NRC counterparts. The meeting in 2003 is planned for Nevada.

It has been a pleasure to work with you and your staff over the past year, and we are looking forward to continued cooperation between NRC and Agreement States in the coming year. Please feel free to contact us, if you wish to discuss any of the issues touched upon in this letter.

Sincerely,



William Sinclair  
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Kathy Allen  
Past-Chair  
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KA:ka

Copy:

Commissioner Dicus	Commissioner Diaz
Commissioner McGaffigan	Commissioner Merrifield

**Organization of Agreement States Resolution  
for a  
Standing Compatibility Committee**

Whereas, the U.S. Nuclear Regulatory Commission (NRC) determines compatibility using Management Directive 5.9;

Whereas, Agreement States have accepted the criteria in Management Directive 5.9;

Whereas, beginning in 1995, a Compatibility Working Group of Agreement States and NRC representatives evaluated the level of compatibility of NRC rules;

Whereas, most States believed the results of the compatibility review were valuable;

Whereas, some States believe the understandings and intent of the Compatibility Working Group have not subsequently been strictly followed, resulting in the excessive use of compatibility category "H&S";

Whereas, unless statutes are changed, the Commission will continue to have responsibility to establish compatibility for rules;

Whereas, a Standing Compatibility Committee would (1) represent a broader range of input to the Commissioners, (2) provide consistency in designating compatibility levels across the range of rules, and (3) improve the compatibility determination process;

Now be it therefore resolved that the Commission should create a Standing Compatibility Committee representing both Agreement States and NRC.

Be it further resolved that the members of the Standing Compatibility Committee should:

- Be specifically trained in making compatibility determinations based on the principles of the 1997 Compatibility Working Group; and
- Establish recommended compatibility levels using Management Directive 5.9; and
- In order to maintain objectivity, not be directly involved in the development of the particular rule being evaluated for compatibility designation.

Be it further resolved that the Standing Compatibility Committee recommendation for each new rule should be presented to the Commissioners when the rule is presented.

October 9, 2001

## **Organization of Agreement States Resolution Requesting a Change of Compatibility Classification for Training and Experience Requirements in the Proposed Part 35**

- 1) Whereas**, NRC Directive 5.9 “Adequacy and Compatibility of Agreement State Programs” describes the process by which compatibility determinations are made; and,
- 2) Whereas**, Part II, Categorization Criteria of Directive 5.9 states, “To be included in Category B, an NRC program element is to be one that applies to activities that have direct and significant effects in multiple jurisdictions.”; and,
- 3) Whereas**, in Part III, Categorization Process for NRC Program Elements of Directive 5.9, the protocol to be used to assign a compatibility category to NRC program elements is explained, to wit, each program element is tested by asking a series of questions in a specified order; and,
- 4) Whereas**, question (3) in Part III, Categorization Process for NRC Program Elements of Directive 5.9 asks “Do the essential objectives of the program element address or define an issue that has a significant, direct transboundary implication?” If the response to the question is “yes”, the compatibility category is “B”. If the response to the question is “no”, then you proceed to Question (4).”; and,
- 5) Whereas**, Question (4) in Part III, Categorization Process for NRC Program Elements of Directive 5.9 asks “Would the absence of the essential objectives of the program element from an Agreement State program create a conflict or gap? If the response is “yes”, the compatibility category is “C”; and,
- 6) Whereas**, The OAS is unaware of any “significant and direct transboundary implications”, regarding training and experience requirements in Part 35, that would allow an answer of “yes” to Question (3); and,
- 7) Whereas**, a Category “C” item of compatibility requires the Agreement State to adopt program elements whose essential objectives are at least as restrictive as the NRC’s; and,
- 8) Whereas**, a physician cannot practice medicine in any state until he or she has received a license from that state’s specific Board of Medical Examiners; and,
- 9) Whereas**, a pharmacist cannot practice nuclear pharmacy in a state until he or she has received a license from that state’s specific Board of Pharmacy; and,
- 10) Whereas**, many states require a medical physicist to be registered or licensed by the state radiation control agency, or other state agency, before practicing their chosen field in that state; and,
- 11) Whereas**, the Organization of Agreement States agrees the NRC should include radiation safety training and experience requirements in Part 35, but we believe such requirements should be considered minimum acceptable criteria; and,
- 12) Whereas**, a number of regulatory agencies do not grant reciprocal recognition of medical radioactive material licenses from other jurisdictions;

**Now therefore be it resolved**, the Organization of Agreement States requests the compatibility for all training and experience requirements in the proposed Part 35 be changed from Category “B” to Category “C” classification.



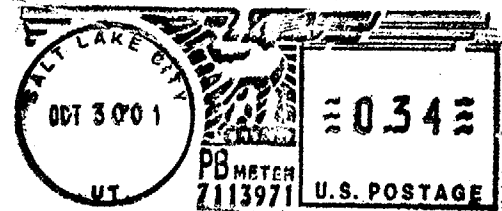
State of Utah

DIVISION OF RADIATION CONTROL  
DEPARTMENT OF ENVIRONMENTAL QUALITY

P.O. Box 144850

Salt Lake City Utah 84114-4850

RETURN SERVICE REQUESTED



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