

September 21, 2005

Mr. Thomas A. Kerr, Executive Director
Conference of Radiation Control
Program Directors, Inc.
205 Capital Avenue
Frankfort, KY 40601

Dear Mr. Kerr:

During the Conference of Radiation Control Program Directors, Inc. (CRCPD) Executive Board meeting, held in conjunction with the annual CRCPD meeting in April 2005, I agreed to reexamine a comment from my March 24, 2005, letter to you. In that letter, NRC provided comments to the CRCPD on proposed changes to Part S, "Requirements for Financial Assurance," of the Suggested State Regulations for the Control of Radiation (SSRCR). In the comment, NRC suggested that CRCPD consider deletion of Phosphorus-33 and Sodium-22 to ensure the model regulation met the Category B compatibility designation assigned to Appendix B to Part 30, where those radionuclides are not included.

We have reconsidered the comment and agree that CRCPD and the Agreement States have the flexibility to include Sodium-22, an accelerator produced radionuclide, in Appendix A to Part S, and equivalent Agreement State regulations. We also concur with the Executive Board that Phosphorus-33 should not be included based on its short half-life. Therefore, we have determined that Part S meets the compatibility and health and safety categories established in the Office of State and Tribal Programs Procedure SA-200.

We would like to note that, with the enactment of the Energy Policy Act of 2005, specifically Section 651(e), NRC now has regulatory authority over use of accelerator-produced radioactive materials and discrete sources of radium-226 and other naturally occurring radioactive material as specified by the Commission. The Energy Policy Act allows the NRC to grant a waiver that would allow current programs to continue to regulate these radionuclides during the waiver period. The NRC issued this waiver August 25, 2005. It was published in the *Federal Register* on August 31, 2005 (70 FR 51581). After expiration of the waiver, and completion of transition activities, we may need to revisit this model regulation.

If you have any questions regarding this letter, please contact me at (301) 415-3340 or Dr. Stephen N. Salomon at (301) 415-2368 or SNS@NRC.GOV.

Sincerely,

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

cc: Kathleen A. McAllister, MA, Chair, SSR Council
Ruth McBurney, TX, Chair, SSR-S
Bruce Hirschler, CRCPD

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We have reconsidered the comment and agree that CRCPD and the Agreement States have the flexibility to include Sodium-22, an accelerator produced radionuclide, in Appendix A to Part S, and equivalent Agreement State regulations. We also concur with the Executive Board that Phosphorus-33 should not be included based on its short half-life. Therefore, we have determined that Part S meets the compatibility and health and safety categories established in the Office of State and Tribal Programs Procedure SA-200.

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LKerr, NMSS/IMNS

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