

February 21, 2006

Mr. Donald A. Flater, Chief
Bureau of Radiological Health
Iowa Department of Public Health
401 S.W. 7th Street, Suite D
Des Moines, IA 50309

Dear Mr. Flater:

I appreciate the opportunity to respond to your letter dated January 31, 2006, which requested clarification from the U.S. Nuclear Regulatory Commission (NRC) on expectations for increased controls. I want to emphasize from the outset that the Commission's expectations on this topic are consistent with the direction taken by Iowa in implementing the increased controls.

By way of background, when the Commission approved COMSECY-05-0028, the transition plan and supporting documentation attached to this COMSECY were also approved. The increased controls were to be issued to radioactive materials licensees authorized to possess radioactive materials in quantities of concern. As you indicated in your letter, and as stated in the NRC Order (EA-05-090), the increased controls only apply if the licensee possesses radioactive materials subject to the Order. This "quantities of concern" approach is clearly noted in addressees for the NRC Order, and in the letter to NRC licensees which attached the Order and increased controls. The draft Order and letter were provided to the Commission with COMSECY-05-0028, and were provided to each of the Agreement State Radiation Control Program Directors by letter dated September 2, 2005 (RCPD-05-014). In addition, the Commission's expectations regarding quantities of concern were also provided in the Chairman's letters to each of the Agreement State Governors which were dated September 2, 2005.

Notwithstanding the discussion above, I understand that some Agreement States may not have been aware of the distinction between Groups I-IV and quantities of concern. I also agree with your assessment that the term Groups I-IV has caused unnecessary confusion, and regret its use in the recent NRC request to update information in the interim database. However, based on responses received from each of the Agreement States to RCPD-05-016 and subsequent communications with my office, each Agreement State appears to be taking the appropriate action to satisfy the expectations of the Commission. To further enhance our communications on these matters, we have worked with the OAS Executive Board to establish routine biweekly teleconferences to provide a forum for each of the Agreement States to be kept abreast of implementation issues.

The NRC recognizes the issue you raised in your letter regarding possible Agreement State uncertainty regarding future Integrated Materials Performance Evaluation Program (IMPEP) reviews of a State's implementation of increased controls. I can assure you that the NRC will continue to use an integrated performance based approach to our IMPEP reviews. The Management Review Board (MRB) takes into consideration all factors affecting a State's performance before arriving upon a final decision regarding the outcome of an IMPEP review. This process is consistent with past findings by the MRB, and with the IMPEP guidance in NRC Management Directive 5.6. For example, due to resource constraints, some Agreement States

may decide to focus their limited resources on the inspection efforts for higher risk and higher priority licensees subject to the increased controls. This is consistent with the Staff Requirements Memorandum (SRM) for COMSECY-05-0028, which directed the staff to recognize in the IMPEP process a possible delay in some routine inspections of lower risk sites to focus on increased controls. In addition, the NRC is now finalizing IMPEP procedures for reviewers in assessing increased controls. These procedures are performance based, have been inclusive of input from the Agreement States, and will include discussion of the flexibility already maintained within the IMPEP process and the flexibility provided by the Commission in the area of increased controls.

I would also like to take this opportunity to note that the Commission directed the NRC staff to provide routine updates on the status of the implementation of the increased controls. These updates are being provided through a monthly staff memorandum to the Commission, and are distributed electronically to each of the Agreement States. Finally, we are currently working with the Agreement States and NRC Regions to provide the needed training of Agreement State and NRC personnel to conduct inspections of the increased controls.

We look forward to continuing to work cooperatively with Iowa and each of the Agreement States to successfully and jointly implement the increased controls. Thank you for the opportunity to address these important issues.

Sincerely,

/RA/

Janet R. Schlueter, Director
Office of State and Tribal Programs

cc: Agreement State Radiation
Control Program Directors

D. A. Flater

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