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STATE OF ILLINOIS
DEPARTMENT OF NUCLEAR SAFETY

1035 OUTER PARK DRIVE
SPRINGFIELD, ILLINOIS 62704

Jim Edgar
Governor

217-785-9900
217-782-6133 (TDD)
December 10, 1996

Thomas W. Ortel
Director

Paul Lohaus, Deputy Director
Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Proposed Management Directive 5.8, "Proposed 274b Agreements With States"
(SP-96-117)

Dear Mr. Lohaus:

The Illinois Department of Nuclear Safety (Department), an Agreement State, provides the following comments on the proposed directive with its attachments.

GENERAL COMMENTS:

1. The changes in the proposed agreement remove provisions that have served as the basis of our mutual cooperation. The pledge of each party to use its best efforts to be compatible has been gutted and replaced in an apparent effort to dignify NRC efforts to require compatibility without early and substantive input from Agreement States. Illinois is strongly opposed to such changes.
2. The directive demands a phased approach without any statutory basis.
3. The NRC gives a misleading indication that it is "the policy of the NRC to enter into agreements with the States" (see the first sentence of the Overview of HANDBOOK 5.8--"PROPOSED 274b AGREEMENT WITH STATES"). Section 274 of the Atomic Energy Act of 1954, as amended, says that the Commission shall enter into agreements with States once the referenced findings are made, thus it is not a discretionary NRC policy to do so.
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In light of Comments 2, 3 and 4, all references to a phased implementation being required should be deleted. If the phased approach is removed, then the second sentence of Article X, Exhibit 1 and Exhibit 2 protocol language should be deleted.

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7. Section 5.8-03 (035), Regional Administrators, in the second bullet, change "reviews form" to "reviewers from".
8. In HANDBOOK 5.8, page 1, last paragraph, first line, after "Therefore," insert "if requested by the State,".
9. In HANDBOOK 5.8, page 1, last paragraph, next to last line, representatives of the Department have stated in several previous documents and in testimony before members of Congress that continuing compatibility is not specifically required by the Atomic Energy Act of 1954, as amended. The NRC is attempting to revise Article VI and VIII of the agreement in order to legitimize its incorrect position. In a phased approach, however, compatibility for provisions that apply to categories of licenses not yet transferred should be required until the time of transfer of those licenses. This paragraph should be revised to reflect such by adding to the end of the sentence "for those program provisions that apply to the categories of licenses not yet transferred".

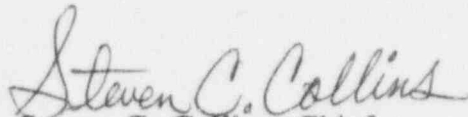
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13. In Exhibit 1, Article II.A.3., second line, reverse the order of the words "waste materials" in order to correct a longstanding error as the term waste applies to all three categories of materials mentioned.
14. In Exhibit 1, Article II.B.2.f., fifth line, be consistent in the use of capital letters for the "t" in "tribe".
15. In Exhibit 1, Article VI, we strongly object to the excision of the pledge of "best efforts" of each party to an agreement to cooperate in remaining compatible. Return to the previous language used for this Article as in the last agreement (with Maine) and most other Agreement States. These versions of the best efforts article were fought long and hard for by New York and should not now be dismissed in a cavalier manner.
16. In Exhibit 1, Article VIII, last line, place the period after "Agreement" and delete the rest of the line for the reasons stated in Comment 9.
17. In Exhibit 2, PROCESS section, first line, insert after "Therefore," the phrase "if requested by the State,".
18. In Exhibit 2, PROCESS section, third bullet, at the end before the period, insert "for those program provisions that apply to the categories of licenses not yet transferred".

Paul Lohaus
December 10, 1996
Page 4

19. In Exhibit 2, PROCESS section, last bullet, insert a comma after "i.e."

If you have any questions regarding these comments, contact me at 217-785-9935 or collins@idns.state.il.us.

Sincerely,

A handwritten signature in cursive script that reads "Steven C. Collins".

Steven C. Collins, Chief
Division of Radioactive Materials

cc: All Agreement States,
MA, OH, OK, PA
Jim Lynch, NRC Region III State Agreements Officer

scc

D&D (SPC3)

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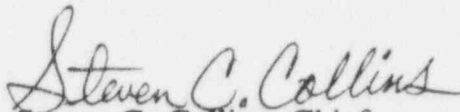
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cc: All Agreement States,
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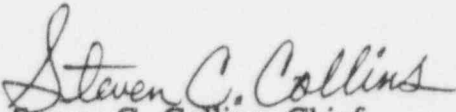
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