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Organization of Agreement States

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PHL  
CHM  
Working Group

Robert Quillin, Chair  
Richard A. Ratliff, P.E., Past Chair

Roland Fletcher, Chair-Elect  
Thomas Hill, Secretary

October 3, 1996

The Honorable Shirley Jackson  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Chairman Jackson:

I am writing to express the appreciation of the Organization of Agreement States (OAS) to the U.S. Nuclear Regulatory Commission (NRC) for hosting this years Agreement States Meeting, and in particular for Commissioner Dicus in meeting with us. Her remarks were very thoughtful and timely.

Our number one issue is the funding for training of Agreement State staff. The loss of training for staff will not have an immediate effect. As time progresses, the lack of a consistent basis of knowledge and process as gained from NRC training courses could appear across State programs. We are concerned with the argument that NRC licensees are supporting the Office of State Program activities and Agreement State licensees are not. This argument does not consider the fact that there are fees being paid to the NRC by Agreement State licensees for reciprocity in NRC states, fees are paid by Agreement State licensed device distributors to the NRC, and that low-level waste surcharges paid to the NRC do not support the low-level waste sites in Agreement States. Nor does this consider the fees paid by power reactors located in Agreement States. The owners of power reactors are frequently Agreement State licensees. To this end, we ask NRC to furnish us with the figure for the most recent available year of the fees paid to the NRC by licensees of Agreement States and non-federal NRC licensees located in Agreement States.

The OAS considers the NRC's Strategic Assessment process to be very important. Consequently, we have assigned specific states to be the lead in assembling comments on various Direction Setting issues (DSI). The OAS plans to make its views known on all of the applicable DSI's, both in writing and at the public meetings. Likewise, we plan over the coming year to comment on proposed NRC rules and policies. Specifically, a motion was passed unanimously concerning the proposed rule on Unauthorized Use of Licensed Radioactive Material (copy attached) and the Draft Final Policy Statement on Adequacy and Compatibility was discussed and changes to the Policy Statement were proposed and adopted (copy attached).

To coordinate better the activities of the joint NRC/Agreement State Working Groups, we propose to invite State representatives of the Working Groups to participate in the monthly NRC/OAS teleconferences to report on the status of the Working Group activities.

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The Honorable Shirley Jackson  
October 3, 1996  
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With respect to IMPEP, the OAS appreciates the opportunity to participate on the IMPEP teams. This has been valuable to both the NRC and the Agreement States. We plan to replace the one review team member who is no longer with an Agreement State and effective January 1, 1997, four state members of the Management Review Board will be replaced.

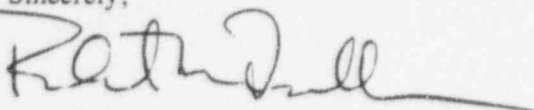
We would also like to express our appreciation for the excellent efforts of the joint NRC/Agreement States Working Groups. These have provided an effective mechanism for the NRC and Agreement States to exchange views on the issues being addressed.

With respect to the officers of the Organization of Agreement States, Roland Fletcher, of Maryland, was elected Chair-Elect and Richard Ratliff was continued as Past Chair.

The Agreement States Meeting provided the opportunity for an exchange of information on various issues related to nuclear medicine, state inspection of NRC licensees, import/export of LLRW and 11e(2) material. One question arose as to the future commitment of NRC to fund travel of the OAS Executive Board. We would like clarification of this for planning purposes. In addition to the previous actions, the members of the OAS passed three resolutions (copies attached). The first two honored previous chairs of the OAS--Wayne Kerr and Terry Strong. The third resolution addresses the issue of training.

We appreciate the opportunity during the meeting to meet with Commissioners Dicus and McGaffigan. We also appreciate that NRC staff was available to discuss issues of mutual interest and concern.

Sincerely,



Robert M. Quillin, Chair  
Organization of Agreement States

Attachments: as stated

cf: All Agreement States Program Directors  
Massachusetts  
Ohio  
Oklahoma  
Pennsylvania



Organization of Agreement States

Robert Quillin, Chair  
Richard A. Ratliff, P.E., Past Chair

Roland Fletcher, Chair-Elect  
Thomas Hill, Secretary

### UNAUTHORIZED USE OF LICENSED RADIOACTIVE MATERIAL

The Organization of Agreement States, Wednesday, October 18, 1996, unanimously approved the following motion regarding the Unauthorized Use of Licensed Radioactive Material:

That the Organization of Agreement States goes on records as opposing the rule as written. That if the rule is implemented by the NRC as currently written that it be assigned a division 3 level of compatibility.

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Robert Quillin, Chair  
Organization of Agreement States



Organization of Agreement States

Robert Quillin, Chair  
Richard A. Ratliff, P.E., Past Chair

Roland Fletcher, Chair-Elect  
Thomas Hill, Secretary

## RESOLUTION ON TRAINING

**WHEREAS**, the Agreement States are in the process of licensing or have licensed all low-level radioactive waste disposal sites which will operate through the end of this century; and

**WHEREAS**, NRC licensees will be using these sites; and

**WHEREAS**, NRC is charging a supplemental fee for waste disposal, and these fees are not being provided to the Agreement States and therefore are not distributed equitably; and

**WHEREAS**, Agreement States respond to incidents involving transportation of NRC licensed material within their jurisdictions; and

**WHEREAS**, Agreement States have conducted surveys and assisted in the removal of byproduct material in defective devices at the request of NRC; and

**WHEREAS**, states monitor the environs of nuclear power plants and other nuclear fuel facilities licensed by NRC with only partial compensation; and

**WHEREAS**, Section 274i of the Atomic Energy Act of 1954, as amended, authorized the NRC to provide training for states; and

**WHEREAS**, many Agreement States provide salaries for staff to participate in NRC IMPEP reviews of Agreement States and NRC Regional Offices; and

**WHEREAS**, for an Agreement State to maintain an adequate staff, the staff must meet minimum training requirements which include training by NRC or training that is consistent with NRC standards; and

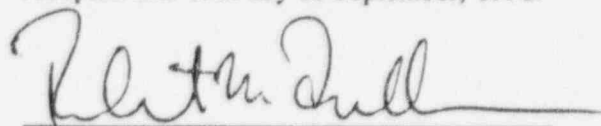
**WHEREAS**, international students are being accepted for training by NRC and such training costs are paid by the NRC licensees; and

**WHEREAS**, Agreement States develop many rules that benefit the NRC such as well logging and industrial radiographer certification.

**NOW THEREFORE, BE IT RESOLVED**, in order to be more equitable, the NRC should reconsider its decision to stop funding the training of Agreement State representatives as may be required for demonstration of adequacy of an Agreement State program.

**BE IT FURTHER RESOLVED**, that copies of this resolution be provided to each of the NRC Commissioners and the National Governors Association.

Adopted this 19th day of September, 1996.

  
Chair, Organization of Agreement States



Organization of Agreement States

Robert Quillin, Chair  
Richard A. Ratliff, P.E., Past Chair

Roland Fletcher, Chair-Elect  
Thomas Hill, Secretary

## RESOLUTION HONORING THE SERVICE OF T. R. STRONG

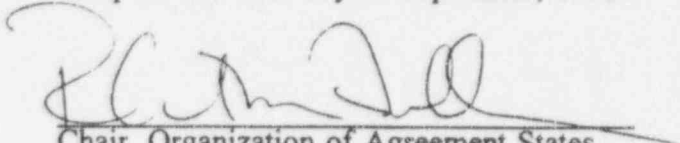
**WHEREAS**, T. R. Strong has faithfully served the people of the state of Washington in the protection of public health and safety as the Director of the Washington Agreement State Program for over twenty years,

**WHEREAS**, T. R. Strong has faithfully served the state of Washington and the other Agreement States as an active member as NARM Czar, and ultimately as chairman of the Conference of Radiation Control Program Directors,

**WHEREAS**, T. R. Strong has faithfully served the Organization of Agreement States through its existence, most recently as Chairman-Elect and until leaving his position as Director of the Washington program, as Chairman of the Organization of Agreement States,

**NOW THEREFORE, BE IT RESOLVED**, that the Organization of Agreement States, in recognition of T. R. (Terry) Strong's many years of dedicated services to the Organization and to the nations' citizens, bestows on him the honorary lifetime membership in the Organization of Agreement States with all attendant honors and privileges.

Adopted this 18th day of September, 1996.



Chair, Organization of Agreement States



Organization of Agreement States

Robert Quillin, Chair  
Richard A. Ratliff, P.E., Past Chair

Roland Fletcher, Chair-Elect  
Thomas Hill, Secretary

## RESOLUTION HONORING THE SERVICE OF G. WAYNE KERR

**WHEREAS**, G. Wayne Kerr has made numerous contributions to the field of radiation protection over the past decades, and

**WHEREAS**, he has worked diligently for many years developing the NRC Agreement State Program and has assisted the states in improving their radiation control programs, and

**WHEREAS**, he has served in both a federal and state capacity and has an excellent understanding of state radiation control program issues, and

**WHEREAS**, he was instrumental in creating the Organization of Agreement States, and

**WHEREAS**, he has served as Chairman-elect, Chairman, and Past Chairman of the Organization of Agreement States, and

**WHEREAS**, he developed a publication entitled "Topical Discussion of the NRC/Agreement State Program" that provides a vital historical perspective of the Agreement State Program and underscores the principles upon which the federal/state cooperative approach to radiation protection are founded, and

**WHEREAS**, he was the motivating force behind discussions between Agreement States and the NRC concerning compatibility issues and served as Chairman of the Organization of Agreement States Compatibility Task Force that submitted a thorough, well-prepared report to the Commission, and


**WHEREAS**, he is respected nationally as a dedicated, cooperative, and knowledgeable health physics and radiation control program professional.

**NOW THEREFORE, BE IT RESOLVED**, that the Organization of Agreement States hereby recognizes G. Wayne Kerr for his excellent understanding and insight into radiation issues from a national viewpoint, especially those requiring federal-state cooperation.

**BE IT FURTHER RESOLVED**, that the Organization of Agreement States hereby expresses its heart felt appreciation for his dedicated service to the radiation programs in the United States of America.

**BE IT FURTHER RESOLVED**, that the Organization of Agreement States, in recognition of G. Wayne Kerr's many years of dedicated service to the Organization and to the nation's citizens, bestows on him the honorary lifetime membership in the Organization of Agreement States with all attendant honors and privileges.

Adopted this 18th day of September, 1996.



Chair, Organization of Agreement States

Revisions Recommended to the

Final Policy Statement  
on  
Adequacy and Compatibility of Agreement State Programs

by

The Joint NRC-Agreement State Working Group  
for  
Development of Implementing Procedures

August 21, 1996



Key:

Text to be deleted is indicated by ~~strikeout~~.

Text to be inserted is indicated by redline.

Addition changes proposed by the Organization of Agreement States are indicated by a combination of the ~~strikeout~~ or underline, and redline, and bold.



## POLICY STATEMENT ON ADEQUACY AND COMPATIBILITY OF AGREEMENT STATE PROGRAMS

### PURPOSE

This Policy Statement presents the Nuclear Regulatory Commission's policy for the determination of the adequacy and compatibility of Agreement State programs established pursuant to Section 274 of the Atomic Energy Act (AEA) of 1954, as amended. This Policy Statement is intended to clarify the meaning and use of the terms "adequate to protect the public health and safety" and "compatible with the Commission's regulatory program" as applied to the Agreement State program. The Policy Statement also describes the general framework that the Agreement States and the Commission will use in determining those NRC program elements<sup>1</sup> that Agreement State programs should implement to be adequate to protect the public health and safety and to be compatible with the Commission's program. Finally, the Policy Statement reflects principles discussed in the Commission's Statement of Principles and Policy for the Agreement State Program which should be considered in conjunction with this Policy Statement.

This Policy Statement is intended solely as guidance for the Commission and the Agreement States in the implementation of the Agreement State program. This Policy Statement does not itself impose legally binding requirements on the Agreement States. In addition, nothing in this Policy Statement expands the legal authority of Agreement States beyond that already granted to them by Section 274 of the Atomic Energy Act and other relevant legal authority. Implementation procedures adopted pursuant to this Policy Statement shall be consistent with the legal authorities of the Commission and the Agreement States.

### BACKGROUND

The terms "adequate" and "compatible" constitute core concepts in the Agreement State program authorized in 1959 by Section 274 of the Atomic Energy Act of 1954, as amended (AEA). Subsection 274d. states that the Commission shall enter into an Agreement under subsection b., discontinuing NRC's regulatory authority over certain materials in a State, provided that the State's program is adequate to protect the public health and safety and compatible, in all other respects, with the Commission's regulatory program. Subsection 274g. authorizes and directs the Commission to cooperate with States in the formulation of standards to assure that State and Commission standards will be coordinated and compatible. Subsection 274j.(1) requires the Commission to review periodically the Agreements and

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<sup>1</sup> For the purposes of this Policy Statement, "program element" ~~or "element"~~ means any component or function of a radiation control regulatory program that contributes to implementation of that program including regulations adopted and promulgated.

actions taken by States under the Agreements to ensure compliance with provisions of Section 274. In other words, the Commission must review the actions taken by States under the Agreements to ensure that the programs continue to be adequate to protect public health and safety ~~and compatible with the Commission's program.~~

Section 274 of the AEA requires that to become an Agreement State the programs be both "adequate to protect the public health and safety" and "compatible with the Commission's program." These separate findings should be based in consideration of two different objectives. First, an Agreement State program should provide for an acceptable level of protection for public health and safety in an Agreement State (the "adequacy" component). Secondly, the Agreement States and Commission must program should also ensure that its/their programs are consistent/serves an overall national interest in radiation protection (the "compatibility" component). As discussed in more detail below, an "adequate" program should consist of those regulations and program elements deemed necessary jointly determined by the Agreement States and the Commission to be appropriate to maintain an acceptable level of protection of the public health and safety within an Agreement State. A "compatible" program should consist of those regulations and program elements deemed necessary jointly determined by the Agreement States and the Commission to be appropriate by the Commission to meet a larger national interest in radiation protection generally limited to areas of regulation that are related to activities involving significant transboundary implications. The requirements/program elements for adequacy focus on the protection of public health and safety within a particular State, whereas the requirements/program elements for compatibility focus on the effects of NRC and State actions or inactions either on the regulation of agreement materials on a national basis or on other States.

#### A. ADEQUACY

An Agreement State's radiation control program is adequate to protect the public health and safety if administration of the program provides reasonable assurance of protection of the public health and safety in regulating the use of source, byproduct, and small quantities of special nuclear material (hereinafter "agreement material") as identified by Section 274b. of the AEA. A State radiation control program for agreement material should contain five essential program elements necessary to provide reasonable assurance of protection of the public health and safety. The overall level of protection of public health and safety provided by the program elements of a State program should be equivalent to, or more stringent than, the level of protection provided by the NRC program. The level of protection provided by the program elements of NRC's program is presumed to be that which is necessary/adequate to provide reasonable assurance of protection of the public health and safety.

The Agreement States and the Commission will use the five program elements, identified below, to define the scope of its/the NRC reviews of Agreement State programs. The Commission will also consider, when appropriate, other aspects of an Agreement State

program, such as program elements ~~or regulations~~, which appear to affect the program's ability to provide reasonable assurance of public health and safety protection. Such consideration will occur only if concerns arise. The Agreement States and the NRC shall jointly determine whether or not any program elements will be changed or added.

## 1. LEGISLATION AND LEGAL AUTHORITY

State statutes should:

- a. authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under an Agreement with the NRC Commission;
- b. authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of protection of the public health and safety;
- c. authorize the State to license, inspect, and enforce legally binding requirements such as regulations and licenses; and
- d. be otherwise consistent with Federal statutes, as appropriate, such as Public Law 95-604, The Uranium Mill Tailings Radiation Control Act (UMTRCA).

In addition, the State should have existing legally enforceable measures such as generally applicable rules, license provisions, or other appropriate measures, necessary to allow the State to ensure adequate protection of the public health and safety in the regulation of agreement materials in the State. Specifically, Agreement States should adopt a limited number of requirements compatible with Commission regulations because of the particular health and safety significance of these rules. In adopting ~~these regulations~~ such requirements, Agreement States should usually impose requirements that are at least as stringent as those of the Commission. The Agreement States and the NRC will jointly determine which regulations meet this criteria.

## 2. LICENSING

The State should conduct appropriate evaluations of proposed uses of agreement material, before issuing a license, to assure that the proposed licensee's operations can be conducted safely. Licenses should provide for a reasonable assurance of public health and safety protection in relation to the licensed activities.

### 3. INSPECTION AND ENFORCEMENT

The State should periodically conduct inspections of licensed activities involving agreement material to provide reasonable assurance of safe licensee operations and to determine compliance with its regulatory requirements. When determined necessary by the State, the State should take timely enforcement action against licensees through legal sanctions authorized by State statutes and regulations.

### 4. PERSONNEL

The State should be staffed with a sufficient number of qualified personnel to implement its regulatory program for the control of agreement material.

### 5. RESPONSE TO EVENTS AND ALLEGATIONS

The State should respond to, and conduct timely inspections or investigations of incidents, reported events, and allegations involving agreement material within the State's jurisdiction to ensure continuing reasonable assurance of protection of the public health and safety.

#### B. COMPATIBILITY

~~An Agreement State radiation control program is compatible with the Commission's regulatory program when its program does not create conflict, duplication, gaps, or other conditions which~~ There is a mutual obligation that Agreement States and the NRC conduct compatible programs, since failure to do so could jeopardize an orderly pattern in the regulation of agreement material on a national basis.

#### C. IMPLEMENTATION

In implementing this approach to adequacy and compatibility, the Agreement States and the Commission will use the following three component approach:

1. The Agreement State should adopt radiation protection standards, and the dose limits in 10 CFR 61.41 <sup>2</sup>, that are essentially identical/equivalent to those of the Commission, unless Federal statutes provide the State authority to

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<sup>2</sup> The Commission intends to implement this component consistent with its earlier decision in the LLW area to ~~allow~~ recognize that Agreement States have flexibility to establish pre-closure operational release limit objectives, ALARA goals or design objectives at such levels as the State may deem necessary or appropriate, so long as the level of protection of public health and safety is essentially equivalent to that afforded by the Commission.



adopt different standards. The term "basic radiation protection standards" means ~~public~~ dose limits and radiation protection related concentration and release limits in 10 CFR Part 20 that are generally applicable to all licensees. The Agreement States and the NRC jointly determine which standards are "basic radiation protection standards."

The Agreement State should also adopt, in an essentially identical/equivalent form, a limited number of definitions, signs, labels and scientific terms which are necessary for a common understanding of radiation protection principles among licensees, regulatory agencies, and members of the public. The Agreement States and the NRC jointly determine which items are included by this criteria.

2. The Agreement State should adopt regulations essentially identical/equivalent to those of the NRC Commission for those areas of regulation that are related to activities involving significant transboundary implications. It is the Commission's intent to limit this category to a small number of regulations (e.g., transportation requirements) that directly involve such activities. The Agreement States and NRC jointly determine which regulations are included by this criteria.
3. For all other regulations and program elements, the Agreement States and the Commission will apply the following approach:
  - a. The Agreement State should adopt and implement essential objectives of certain Commission ~~regulations and~~ program elements (e.g., reciprocity procedures), determined jointly by the Agreement States and the NRC, that are important for an Agreement State to have in order to ~~ensure avoid conflicts, duplications, gaps, or other conditions which jeopardize~~ an orderly pattern in the regulation of agreement material on a national basis. Such Agreement State ~~regulations or~~ program elements need not be identical to should be as effective as the corresponding Commission ~~regulations or~~ program elements; in a few cases involving specific statutory direction, however, Agreement State regulations ~~must~~ should be at least as stringent as ~~that those~~ of the Commission;
  - b. The Agreement State ~~should have~~ has flexibility to adopt and implement Commission ~~regulations and~~ program elements in addition to those necessary to maintain for adequacy or compatibility, as identified in CB.1, CB.2, and CB.3.a above; and

- c. An Agreement State may adopt and implement other ~~regulations and program~~ elements within the State's jurisdiction that are not addressed by ~~the Commission~~ NRC.

All ~~regulations and program~~ elements covered under this third component ~~must should~~ be compatible with those of the Commission (i.e., ~~must should~~ not create conflict, duplication, gaps, or other conditions which jeopardize an orderly pattern in the regulation of agreement material on a national basis).

In addition, Agreement State ~~regulations or program~~ elements covered under this third component should not be adopted or implemented in such a manner that the State:

- d. precludes, or effectively precludes, a practice<sup>3</sup> within the national interest without an adequate public health and safety or environmental basis related to radiation protection; or
- e. precludes, or effectively precludes, the ability of the Commission to evaluate the effectiveness of the NRC and Agreement State programs for agreement material with respect to protection of public health and safety.

~~Finally, t~~ To foster and enhance a coherent and consistent ~~national~~ program nationally for the regulation of agreement material, the Commission encourages Agreement States to adopt and implement similar ~~regulations and program~~ elements which are patterned after those adopted and implemented by the Commission. Finally, the fact that an Agreement State's program is compatible with that of the Commission does not affect that State's obligation to maintain an adequate program as described in this Policy Statement.

By adopting the criteria for adequacy and compatibility as discussed in this Policy Statement the Commission intends to ~~provide clearly recognize that the~~ Agreement States ~~with have~~ a broad range of flexibility in the administration of an individual program. In doing so, the Commission ~~seeks to allow recognize that~~ Agreement States ~~to will~~ fashion their programs so as to reflect specific State needs and preferences. The Commission ~~intends to will~~ minimize the number of NRC regulatory requirements that the Agreement States will be requested to adopt in an ~~identical equivalent~~ manner ~~as a result of the compatibility components~~. At the same time, ~~these adequacy and compatibility~~

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<sup>3</sup> "Practice" means a use, procedure, or activity associated with the application, possession, use, storage, or disposal of agreement material. The term "practice" is used in a broad and encompassing manner in this Policy Statement. The term encompasses both general activities involving use of radioactive materials such as industrial and medical uses and specific activities within a practice such as industrial radiography and brachytherapy.

components will allow form the basis of a partnership effort among the Agreement States  
and the Commission to ensure that an orderly regulatory pattern for the regulation of  
agreement material exists across the country. The Agreement States and the Commission  
believes that this approach achieves a proper balance between the desire need for Agreement  
State flexibility and the need for coherent regulation of agreement material across the  
country.