(4)

DCD (SP03)
RLB2
PHL
CHM
Working Group

STATE OF ILLINOIS
DEPARTMENT OF NUCLEAR SAFETY
1035 OUTER PARK DRIVE
SPRINGFIELD, ILLINOIS 62704
217-785-9900
217-782-6133 (TDD)

Jim Edgar
Governor

Thomas W. Ortciger
Director

October 31, 1996

96 NOV -7 PM 4:13
OSP

Richard L. Bangart, Director
Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Report of the Joint NRC-Agreement State Working Group for Development of Implementing Procedures for the Final Policy Statement on Adequacy and Compatibility of Agreement State Programs dated August 21, 1996

Dear Mr. Bangart:

We appreciate the opportunity to comment on the subject draft report prepared by the Adequacy & Compatibility Working Group. The Illinois Department of Nuclear Safety's specific comments are enclosed.

This effort has confirmed what many of us have long held to be axiomatic; many NRC rules heretofore considered preeminent in the context of compatibility determinations (i.e., Division 1) are found to be less than compelling on thoughtful examination. However, we must disagree with one facet of the methodology used to demonstrate that which was self-evident. The approach taken in the evaluation of individual rules has inflated the importance of the determination of compatibility beyond that which one could logically conclude was originally intended. As a result, the importance of compatibility has been expanded to such an extent that it appears to supersede considerations of public health and safety.

Since the inception of the Agreement State program, evaluations of Agreement States have been based principally on whether a program was adequate to protect the public health and safety. Considerations of compatibility were reserved nearly exclusively for the review of related regulations. Typically, compatibility evaluations represented less than 20% of the evaluation effort. Based on the construct used for the evaluation of rules presented in this report, NRC now seems to have subordinated program adequacy (i.e., public health and safety) to considerations of compatibility. We

SP-C-6

believe that this approach is inappropriate, and that a determination whether a rule is germane to public health and safety (i.e., program adequacy) should precede considerations of compatibility.

On September 19, 1996, all 29 Agreement States agreed on a revised version of the "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs." That statement differs significantly from the policy statement included as Attachment 2 of the subject report.. The Agreement State revisions to the policy statement are underlain by concepts outlined in this letter, as well as the idea that the NRC in conjunction with the Agreement States should determine what items are necessary for program elements such as adequacy, compatibility, and effective communication. The report's Executive Summary and Attachments 3, 4 and 5 should be revised to incorporate the intent of the Agreement State revision of the "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs." It does not appear that this would necessitate revision of the classification of most of the regulations detailed in the comparison tables.

NRC should implement its "strategic partnering" concept for the Agreement States. This concept is described in the Strategic Assessment and Re-Baselining Initiative Stakeholder Involvement Process Paper, Direction Setting Issue 20, which states:

> "NRC might also transform some traditional assistance relationships into what might be called "strategic partnering," in which the relationship is less "donor" helping "recipient" and more equal and cooperative. Such a relationship could encourage other countries to contribute more of their scientific and technical capabilities to enhancing nuclear safety worldwide. Any evaluation should assume that NRC's primary role remains assisting foreign regulators to strengthen their capabilities."

The Agreement States regulate more types of radioactive materials, more types of facilities, and more types of ionizing radiation producers than most countries. Also, Agreement States have already developed regulatory programs that surpass those of the majority of other countries. Agreement States also regulate all of the commercial LLRW disposal facilities in the United States. If NRC believes that foreign radiation protection programs are deserving of "equal and cooperative" relationships, certainly Agreement States are equally as deserving.

NRC's policy statement indicates that it represents "guidance"; however, many statements in the implementing procedures described in the subject report specify certain NRC conditions or program elements as requirements of the Commission. This comes as no surprise to those experienced in NRC's regulatory programs. Illinois has found an inconsistency over the years between NRC's public statements recognizing the Agreement States as partners and its actions unilaterally making pronouncements that the Agreement States are mandated to follow. The body of agreements between the Agreement States and the NRC represents a pledge of cooperation among programs rather than a platform for NRC to dictate requirements to state governments.

The cover letter dated August 21, 1996, indicated that the Office of General Counsel (OGC) currently is reviewing the issue of the NRC's policy of requiring states to adopt certain compatibility requirements in the form of rules, rather than allowing another form of legally binding requirement. We view this issue as one of form over substance. As long as the requirements are clearly communicated in a timely manner, the format of the legally binding requirements has little bearing on the adequacy to protect health and safety and the environment. Each state should be able to impose the requirements as best suits its needs.

If you have any questions regarding these comments, you may contact me at the address on the letterhead or at (217) 785-9868.

Sincerely,

Thomas W. Ortciger
Director

TWO:bc

Enclosures

cc: Working Group Members
James Lynch, NRC Region III

ENCLOSURE

This enclosure presents detailed comments on the Report of the Joint NRC-Agreement State Working Group for Development of Implementing Procedures for the Final Policy Statement on Adequacy and Compatibility of Agreement State Programs dated August 21, 1996

GENERAL COMMENT:

1. The Executive Summary and Attachments 3, 4 and 5 need to be revised to match the revised Attachment 2 as indicated by all 29 Agreement States on September 19, 1996. These revisions would not necessitate revision of the classification of most of the sections of each Part of the regulations.

SPECIFIC COMMENTS:

2. Page 1--Executive Summary, third paragraph, the most important aspect of adequacy and compatibility is whether or not a program is "adequate to protect the public health and safety." This paragraph should be revised to indicate that is the case.

3. Page 1--Executive Summary, fourth paragraph, fourth line and fifth paragraph, first line, the Policy Statement indicates that the items contained therein are "guidance," however, these references indicate certain NRC requirements or program elements may be "required" by the Commission for compatibility reasons. We do not believe Section 274 of the AEA requires compatibility of programs or program elements after an agreement is effective except for UMTRCA requirements in Section 274o. Nevertheless, we pledge our best efforts to maintain compatibility. Illinois recognizes that there are limited areas in which NRC may require Agreement State regulations to be essentially identical to those of NRC for adequacy and interstate commerce reasons. (There are certain basic radiation standards and definitions, rules affecting products moving in interstate commerce, and some rules affecting mobile licensees that operate in more than one jurisdictional area -- i.e., state to NRC, state to state, or NRC to state.) The NRC should, however, provide the Agreement States a real opportunity to work with the NRC to reach mutual agreement when compatibility of programs or program elements are an issue.

The comments below are changes that match those approved by the 29 Agreement States for the proposed revision of the "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs."

4. Executive Summary, Page 5, Section 3.2.2.1, the second line of the first paragraph, the Agreement States and NRC should work together to change 10 CFR 61.41 so uniform dose methodology is used throughout all parts of the regulations. The 25/75/25 dose limitations were established using methodology other than ICRP 26 and 30 that serve as the basis for the current 10 CFR 20.

5. Executive Summary, Page 5, Section 3.2.2.1, the last line of the first paragraph, change the phrase "applicable to all" to "generally applicable to" in order to reduce potential misinterpretation regarding application to licensees with sealed sources only. The concentration and release limits in 10 CFR 20 are not relevant to sealed sources.

6. Executive Summary, Page 5, Section 3.2.2.1, the third line of the second paragraph, the word "are" should be replaced with the phrase "have been determined in conjunction with the Agreement States and the NRC to be".

7. Executive Summary, Page 5, Section 3.2.2.1, the examples following the second paragraph . . . for scientific terms, there should be a clear understanding that use of new terms defined equivalently would not result in a non-compatible finding by the NRC (e.g., the ICRP's newer term "deterministic").

8. Executive Summary, Page 5, Section 3.2.2.2, after the end of the last sentence of the first paragraph, add "The areas of regulations to which this applies will be determined by the NRC in conjunction with the Agreement States."

9. Executive Summary, Page 7, Section 3.2.3.2, for the end of the first paragraph, the following sentence should be added "All the above compatibility component assignments will be determined by the NRC in conjunction with the Agreement States."

10. Executive Summary, Page 7, Section 3.2.3.2, in the second line of the first example listed, the phrase "in Compatibility Component 1 above" should be replaced with the phrase "for an adequate radiation protection program".

11. Executive Summary, Page 7, Section 3.2.3.2, in the fourth example listed, what is in the national interest should be determined by the NRC in conjunction with the Agreement States or, alternatively, the criteria and method for making the determination should be determined by the NRC in conjunction with the Agreement States and clearly specified. See SPECIFIC COMMENT 3.

12. Executive Summary, Page 8, Section 3.2.3.2, in the fifth example, the determination of what is "effective communication" should be made by the NRC

in conjunction with the Agreement States or, alternatively, the criteria and method for making the determination should be made by the NRC in conjunction with the Agreement States and clearly specified. Otherwise, the NRC may claim that endless surveys and request for information are needed in the national interest or for effective communication. The Agreement States' experience and the OMB's opinion have been that sometimes the NRC requests or requires information that is not justified. See SPECIFIC COMMENT 3.

13. Executive Summary, Page 8, Section 3.2.3.3, it is not generally the NRC's job to oversee implementation of federal statutes pertaining to other federal agencies (e.g., the federal Clean Air Act). The NRC should leave that matter to the Agreement States and the appropriate federal agency.

14. Executive Summary, Page 8, Section 3.2.3.4, see SPECIFIC COMMENT 2. Whether or not such is required should be determined by the NRC in conjunction with the Agreement States. See SPECIFIC COMMENT 3.

15. Executive Summary, Page 8, Section 3.2.3.5, all determinations of whether conflicts, duplications, gaps, and practice in the national interest exist should be determined by the NRC in conjunction with the Agreement States. For example, the NRC should not be determining what a particular Agreement State's regulation limit is for dose or exposure from machine produced radiation or accelerator produced radioactive material even when the source of radiation is in a facility that is using agreement material.

16. Executive Summary, Pages 8 and 9, Section 3.3, see SPECIFIC COMMENT 2.

17. Executive Summary, Page 11, Section 4.1, third paragraph, fourth and sixth lines, see SPECIFIC COMMENT 3 regarding the concept and use of "require".

18. Executive Summary, Page 11, Section 4.1, fourth paragraph, this is probably the best explanation of compatibility that the NRC has utilized to date. The Agreement States' position on compatibility was set out in Thomas E. Hill's letter dated January 24, 1991, to the Honorable Kenneth M. Carr, a copy of which is enclosed.

19. Executive Summary, Page 12, Section 4.2, second paragraph, first sentence, no change is needed for the IMPEP procedures.

20. Executive Summary, Page 14, Section 5.2, second paragraph, first sentence, see SPECIFIC COMMENT 3 regarding the concept and use of "require". Also, which

regulations this applies to should be determined by the NRC in conjunction with the Agreement States.

21. Executive Summary, Page 14, Section 5.2, third paragraph, first sentence, the program elements to which this applies should be determined by the NRC in conjunction with the Agreement States not "by NRC" as indicated in the last two words of the sentence.

22. Executive Summary, Page 15, Section 5.3, first paragraph, fourth through eighth lines, by the reference to Management Directive 5.9, it appears that the NRC is indicating that legally binding requirements have to be in the form of regulations within six months of acquiring certain types of licensees. If this is a correct interpretation, then it should be expressed as a goal as it is unrealistic and unwise to expect either the NRC or most Agreement States to develop and adopt regulations in six months, except when an emergency exist. Also, see SPECIFIC COMMENT 3.

23. Executive Summary, Page 15, Section 5.3, second paragraph, second line, see SPECIFIC COMMENT 3.

24. Executive Summary, Page 15, Section 5.4, first paragraph, second line, see SPECIFIC COMMENT 3.

25. Executive Summary, Page 15, Section 5.4, first paragraph, fourth sentence, the introductory conditional clause should be deleted leaving all after the comma.

26. Executive Summary, Page 16, Section 5.5, first paragraph, third line, replace the words "coordinated with the Agreement States" with the words "determined by the NRC in conjunction with the Agreement States". See SPECIFIC COMMENT 3.

27. Executive Summary, Page 16, Section 5.5, first paragraph, sixth line, replace the word "staff" with the phrase "the NRC in conjunction with the Agreement States". See SPECIFIC COMMENT 3.

28. Executive Summary, Page 16, Section 5.5, second paragraph, rewrite this paragraph to indicate that the NRC in conjunction with the Agreement States will determine the health and safety component or compatibility component and the essential objective(s).

ATTACHMENT 2

See GENERAL COMMENT 1.

ATTACHMENT 3--new Management Directive 5.9

We will be happy to work with the Working Group to revise it.

ATTACHMENT 4--new Handbook 5.9

We will be happy to work with the Working Group to revise it.

COMPARISON TABLES

1. 20.1003 Definitions. For "Reference Man" the Agreement States should have flexibility in this definition to include information recommended by the ICRP.

2. 20.1003 Definitions. For "Sanitary Sewerage" the definition seems to be for the term "Sanitary Sewerage System" as used by agencies that regulate such systems and the stuff dumped into the systems. The Agreement States should have flexibility to use the term that will not cause misunderstanding for the state's licensees.

3. 20.1003 Definitions. For "Stochastic" the term "Probabilistic" should be an acceptable substitute in the comments column.

4. 30.35(d) Financial assurance and record keeping for decommissioning, the classification should be 3.a rather than 3.b* and the comment column should say "are" instead of "may be."

5. 30.36(h) Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas, the classification should be 3.b rather than 3.b*.

6. 30.41 Comment in the comparison table, the phrase "for the implementation of coherent national program" should be replaced with "to prevent unnecessary restriction of interstate commerce."

7. 31.11 Comment in the comparison table, the word "devices" should be replaced with the word "materials."

8. 35.32 Quality management program, all sections should be classified as 3.b. rather than some being 3.b* as there should be flexibility in how the states implement these provisions and the NRC has no proof that the method it has forced on the Agreement States has resulted in improvement in health and safety.

9. 40.36(a), (b) and (d) Financial assurance and record keeping for decommissioning, the classification should be 3.a rather than 3.b*.

10. 40.42(c), (d), (e), (g), (h), (i), (j), and (k) Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas, the classification should be 3.b rather than 3.b*.

Georgia Department of Natural Resources
205 Butler Street, S.E., Floyd Towers East, Atlanta, Georgia 30334
Joe D. Tanner [illegible], Commissioner
Harold F. Reheis, Assistant Director
Environmental Protection Division

January 24, 1991

The Honorable Kenneth M. Carr
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Carr:

I am writing this letter as a result of an action taken by the Agreement States at the annual meeting hosted by NRC in Reno, Nevada October 30 November 1, 1990.

At that meeting, the Agreement States unanimously agreed that there is an apparent need to more thoroughly articulate our viewpoint on the kind of relationship we, as individual states and the collective body of Agreement States, should have with the NRC. Some of these concerns were included in the letter Ms. Dicus sent to you on November 16, 1989, on behalf of the Agreement States. However, the Agreement States believe that insufficient progress has been made in certain areas. Therefore, we would like to reiterate some concerns and offer possible solutions. Our comments are provided for the purpose of improving our working relationships, preventing problems before they occur, and providing you and the other Commissioners with our views. The central themes of this letter are our working relationships and the issue of compatibility. The letter to you of November 16, 1989, following the 1989 Agreement State meeting stated in part that Dr. Montgomery's (Deputy Administrator, NRC Region IV) "most positive remarks about the partnership type of relationship which exists between the states and the U.S. NRC are consistent with our concept of how we must relate to each other . . . . Dr. Montgomery described, in terms we understand and endorse, exactly the nature of the relationship we strive to have with you." However, that is not the type of relationship we have achieved. In fact, one year later, it is not obvious to us that those views are either understood or shared by other members of NRC management. We believe the type of relationship described by Dr. Montgomery should be endorsed by the Commission, promulgated as NRC policy, and implemented at all levels of NRC Headquarters and the Regions.

I would like to first address the issue of compatibility and the State's perception of how it has been handled in recent years, although we believe that compatibility is really part of the larger issue of what rights and responsibilities accrue to a state that enters into an agreement with NRC.

PP77

9102040189

It appears that the Agreement States and the NRC have a fundamental disagreement regarding the interpretation of the term "compatibility" as used in Section 274 of the Atomic Energy Act. Frankly, this is the issue that most vividly brings into focus the subject of our relationship with the NRC and is a symptom of this more general issue. As Agreement States, we have a high interest in compatibility between states as well as with the NRC. (This is reflected by the extensive state efforts placed on the development of the Suggested State Regulations). However, the Agreement States believe that maximum flexibility should be allowed for states to achieve a desired goal in ways that best suit their circumstances. We thought that the NRC had taken a significant step to resolve this fundamental disagreement by initiating the study by Sheldon Schwartz, Office of Governmental and Public Affairs, on which he reported at the annual meeting. Based on his report, it appears he has a good understanding of the sentiment of the states. The October 5, 1990, memorandum from Secretary Chilk to Messrs. Taylor, Parler and Denton directed the NRC staff to form an interoffice group to evaluate the compatibility issue and provide recommendations and options for Commission consideration. We were disappointed by the Commission's rejection of the Agreement States' request to participate in the work of such a task force as indicated in Item C of the November 16, 1989 letter, and Mr. Schwartz' recommendation in his memo of July 12, 1990 to Mr. Denton. Therefore, having been initially excluded from participating directly with NRC on this issue, at the recent meeting the Agreement States appointed our own task force of senior Agreement State regulatory officials to develop and state our position in a more formalized manner. We do appreciate the opportunity to provide some preliminary views to Mr. Schwartz' group on January 18, 1991.

Based on preliminary discussions among Agreement States, we have broken the subject of compatibility into the following specific issues:

1. What is the meaning of compatibility?

2. To what does compatibility apply: regulation provisions, totality of all radiation program elements, administration of programs, etc.?

3. How is it implemented: at NRC's discretion, as a joint effort, or is there yet some other approach which has not been determined.

4. What is the legislative and historical background of the issue, and has that frame of reference been used in carrying out the NRC (AEC) Agreement State program since 1962?

5. Most importantly, how does the implementation of compatibility relate to the protection of the public health and safety?

Without prejudging any conclusions of our above-mentioned task force, and based on discussions among Agreement States, we can make some preliminary observations.

First, we do not believe compatibility means identical except in rare circumstances.

Second, we do not believe it means "do it the NRC way."

Indeed, the common definitions of compatibility that are familiar to us make no mention of either identity or rigid conformance. Rather, we associate compatibility with such definitions as "existing together in harmony," or "capable of performing in harmonious, agreeable, or congenial combination with another or others."

Additionally, although the legislative and historical background is somewhat mixed, we believe that compatibility is a general term that neither implies identity nor prohibits Agreement States from adopting standards that are different than NRC's except in limited circumstances. This interpretation is also consistent with the principles of federalism expressed in Presidential Executive Order 12612 dated October 26, 1987. Further, we do not subscribe to the notion that what is good for NRC is also good (or necessary) for Agreement States. That is not always so and should be dispensed with post haste. A recent example is NRC's change in inspection frequencies without any state input, and statements by NRC staff that we must now adopt the changes. Agreement States regulate similar uses and users of radioactive material, but we must respond to differing concerns, differing logistics, and differing technical, social and geographical interests that affect our respective citizens and regulated community. A policy that may be reasonable or desirable for NRC to adopt may not be transferable to States.

We also want to take note of recent statements by NRC, including remarks that you have made at various meeting, that there are four divisions related to compatibility. There is no legislative record, agency rule making, or other formal document which addresses this concept, nor are we aware of any opportunity for comment on its development. We understand that the four divisions are derived from the internal State Agreements Program Procedure B.7, and relates only to rule categorization. There was no direct involvement of Agreement States in the development of this procedure. I want to list a few areas of recent or current rule making where the issue of compatibility is of serious concern to many of us. This is merely illustrative and not meant to be an exhaustive list.

1. Medical misadministration and medical quality assurance. We understand the direction to make these items matters of compatibility came directly from the Commission. If so, it was done without an adequate airing of the issue and input from the Agreement States. Interestingly, NRC staff has at various times stated that rules on medical misadministration and quality assurance are matters of strict compatibility which must be adopted by Agreement States as Division 1 rules. Yet, Procedure B.7 lists medical misadministration as a Division 3 rule. Thus, the inconsistent application of compatibility determinations to rule categorization is another area of concern.

2. NRC's approach on radiographer certification utilizing the ASNT program. Although radiographer certification is an area that needs attention, we need to be able to adopt different approaches to this issue. While a certification requirement may be indicated, specific methods of implementing a certification requirement should be left to the individual States. It is not appropriate for NRC to require Agreement States to adopt, or even recognize, ASNT certification. Statements of NRC staff that a future rule making implementing certification requirements will be a matter of strict compatibility are troubling, especially since the rule has not yet been drafted!

3. Financial surety requirements. Without adequate input from States, NRC has deemed these requirements to be a matter of compatibility and has imposed a deadline by which Agreement States are to have adopted compatible regulations. Although that deadline is less than six months away, NRC to date has not determined the compatibility division for the requirements. Financial surety requirements must be strictly between the regulatory agency and the regulated community within its jurisdiction. Flexibility in implementation is required by the Agreement States given the difficulty in estimating what clean-up costs are likely to be and to accommodate state laws. It is distressing that this close to the NRC imposed deadline, and without State input, NRC has not determined what state regulations must include to be compatible.

4. Rules where states desire to impose more conservative standards than NRC. Illustrative of this are state requirements for commercial low-level radioactive waste disposal operations and waste management practices.

   For example, NRC has a general requirement that persons in unrestricted areas shall not receive exposures exceeding 500 mrem per year from licensed operations (10 CFR 20.105(a)), which will soon be lowered to 100 mrem per year. NRC also has a requirement that these same persons can only receive a whole body exposure of 25 mrem per year from releases of radioactivity from a disposal site (10 CFR 61.41). Under NRC's BRC policy, members of the general public near a sanitary landfill where radioactive wastes may be disposed could receive 10 mrem per year. Under contemplated EPA rules, the allowable limit for members of the public would be 4 mrem per year. Notwithstanding this plethora of inconsistent standards at the federal level, the NRC has raised the flag of compatibility to those states (both existing Agreement States and Agreement State applicants) who wish to adopt a more conservative standard which they feel affords their citizens a higher degree of protection.

   Congress expressly provided for withdrawal of Agreement State authority if such action is required "to protect the public health and safety." While an Agreement State standard that is less stringent than an NRC standard could conceivably fail to protect the public health and safety, we do not understand how an Agreement State standard that is more

> stringent than an NRC standard could do so. It is significant that Congress did not require or authorize NRC to take action against an Agreement State that has a radiation protection standard that is more stringent than NRC's. We are unaware of any situation identified by NRC where a more stringent standard of an Agreement State has failed to protect public health and safety.

We also believe the legislative history of Section 274 of the Atomic Energy Act reflects different compatibility requirements for states preparing to enter into an agreement from those required after an agreement is signed. The words of the statute itself support this contention. There are good and sufficient reasons why these requirements are different. Notwithstanding the findings of the General Counsel as stated in Section IV of the GPA July 1990 Report on Compatibility Survey of State Views, we do not believe this is dispositive of the matter, and in fact, many Agreement States disagree with that position.

There has been a long history of cooperation between NRC (AEC) and the Agreement States. Indeed, Section 274(a)(2) of the Atomic Energy Act of 1954, as amended, states that cooperation is one of the purposes of the Act and Section 274(g) directs the Commission to cooperate with the states. The States, in turn, pledge their best efforts to cooperate with the Commission by terms of the Agreements each has entered into with the NRC (AEC). Cooperation is essential for promoting an orderly regulatory pattern between the Commission and state governments with respect to the regulation of byproduct, source, and special nuclear materials. We do not underestimate the difficulty in maintaining a constructive, cooperative relationship between the NRC and the current 29 Agreement States. Accordingly, this letter has been reviewed by officials of each Agreement State. However, this letter should not be interpreted to reflect a unanimous position of all the Agreement States on each and every word or sentence. It does reflect a consensus of officials of these states on some general principles of cooperation and working relationships.

Let me give just a few examples of what we believe to be impediments to the kind of relationship we envision. The Agreement States are not licensees of the NRC and do not believe the relationship NRC has with its licensees is an appropriate model for the NRC/Agreement State relationship. Similarly, because we are autonomous regulators, it is not appropriate for NRC to cast us in the light of members of the general public, as that term is commonly understood. We have been told on some occasions that our comments are given the same consideration as those of licensees and members of the public. Rather, due to our agreements with NRC, we have a special relationship that carries with it certain privileges as well as certain responsibilities. We are fellow regulators and professionals, individuals who may have ideas equally as good as, or better than, those of NRC or other federal agencies. We expect the Office of Governmental and Public Affairs to present the views of the Agreement States on significant issues to the Commission in a proactive manner. We tried for many years to direct the attention of NRC (AEC) to the problems associated with its regulation of general licensees, but with little success. Only recently has NRC come to acknowledge these problems and take action. Likewise, the state of Texas has moved forward in the area of certification of radiographers prior to NRC taking action on this issue.

Believing it is appropriate to propose possible solutions to the cooperation problem in general and the compatibility issue in particular, I will attempt to do so. Three possible avenues that the Commission should consider are:

1. A real participative involvement of states on NRC/Agreement State issues and in particular, on issues related to compatibility. Earlier and more effective involvement of Agreement States is essential. NRC must solicit the input of Agreement States on policy and regulatory proposals and must be responsive to concerns raised by States on both proposed and existing policies and regulations.

2. Appointment of an Advisory Committee of State Officials to NRC. This Committee should have a rather specific charter to focus its deliberations, though it could consider a broader range of issues than just Agreement State regulatory issues. This Committee would be most effective if it were composed of senior level state officials, including some officials directly responsible for radiation regulatory programs.

3. A legislative solution that would assure that Agreement States have the discretion they need to carry out their responsibilities and are not subjected to arbitrary decisions of NRC.

Obviously, the first suggestion is the most desirable because of its less formal stature and relative ease of implementation. However, if favorable results are not forthcoming, it may be necessary to consider other solutions.

I want to close by stating concisely our current feelings. The bottom line is that an Agreement State must conduct a regulatory program that is adequate to protect the public health and safety. That is what is mandated by Section 274 of the AEA and what is required by common sense. The issue should not be clouded by form over substance, i.e., unilateral and arbitrary decisions by NRC on the application of compatibility. The methods by which the States arrive at an adequate program are largely irrelevant. This thought was captured most eloquently on page 24 of an NRC decision (Docket No. MISC-87-1) dated August 5, 1988, wherein it was stated, "No doubt there are many instances in which the (NRC) staff's preferences are upset by a Section 274 Agreement, but Agreement States are not mere ministers of the Commission's will. Indeed, no state may become an Agreement State unless it can demonstrate the capacity for judgment which, though in compliance with minimum federal standards, displays independence." Those are well crafted words, words with which I think each Agreement State can concur. It is this independence that we wish to preserve, while continuing to protect the health and safety of our citizens.

We hope you and the other Commissioners will seriously consider the views and constructive concepts expressed in this letter. As I stated at the beginning of this letter, our objective is to improve our working relationships, to resolve current problems affecting Agreement States, and to prevent other problems before they occur. We have met with the NRC's

Task Force with some preliminary views offered. We encourage you to await the receipt of our Task Force report, which should be available in early March, before taking any action on this important issue. We would also be pleased to discuss our views with the Commission at a mutually agreeable time subsequent to your receipt of the report of our Task Force.

Sincerely,

Thomas E. Hill

Thomas E. Hill, Chairman
Organization of Agreement States

TEH:ynp

cc: Mr. Carlton Kammerer
Agreement States
Maine
Michigan
Oklahoma
Pennsylvania
Captain Karl Mendenhall, USN
Major Lawrence Donovan, USAF
Ms. Catriona M. Maloney, AECB, Canada
Sr. J. Raul Ortizmagana, CNSNS, Mexico