

December 27, 2006

David Allard, Director  
Bureau of Radiation Protection  
Department of Environmental Protection  
Rachel Carson State Office Bldg.  
P.O. Box 8469  
Harrisburg, PA 17105-8469

Dear Mr. Allard:

We have reviewed the Pennsylvania Order to implement increased controls for certain licensees that possess certain radioactive materials in quantities of concern, received by our office on November 28, 2006. The Order was reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) Order EA-05-090. We discussed our review of the Order with Richard Morrison and Ronald Hamm on December 12, 2006.

As a result of our review, we have four comments that have been identified in the enclosure. Please note that we have limited our review to the legally binding requirements required for compatibility and/or health and safety. We have determined that if these requirements are revised, incorporating our comments and without other significant change, they would meet the compatibility category 'B' designation assigned to NRC Order EA-05-090. We note that Pennsylvania has included Radium-226 as being subject to increased controls, which is under the regulatory jurisdiction of Pennsylvania. The NRC is considering what actions may be necessary in response to the Energy Policy Act and does not have any views at this time on the appropriateness of including Radium-226 in the table of radionuclides subject to increased controls.

We request that when you revise your legally binding requirements to address our comments, a copy of the revised legally binding requirements be provided to us for review. As requested in STP Procedure [SA-201](#), "Review of State Regulatory Requirements," please highlight the location of any changes made by Pennsylvania, in response to our comments, and provide a copy to the Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs (FSME) (see letter [FSME 06-94](#) dated October 6, 2006 for further information).

If you have any questions regarding the comments, the compatibility and health and safety categories, or the NRC Order used in the review, please contact Kathleen Schneider, State Regulation Review Coordinator at 301-415-2320 (email: [kxs@nrc.gov](mailto:kxs@nrc.gov)) or Andrew Mauer at 301-415-3962 (email: [anm@nrc.gov](mailto:anm@nrc.gov)).

Sincerely,

***IRA By S.W. Moore***

Scott W. Moore, Deputy Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials and  
Environmental Management Programs

Enclosures:  
As stated

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**IRA By S.W. Moore\**

Scott W. Moore, Deputy Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials and  
Environmental Management Programs

Enclosures: As stated

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**COMPATIBILITY COMMENTS ON PENNSYLVANIA LEGALLY BINDING  
REQUIREMENT**

| STATE SECTION |   | NRC SECTION            | RATS ID | CATEGORY | SUBJECT and COMMENTS   |
|---------------|---|------------------------|---------|----------|--|
| 1             | PA Order<br>(11/20/06)<br>Attachment<br>B | NRC Order<br>EA-05-090 | 2005-3  | B        | <p>The first sentence of paragraph 11 states that “As an Agreement State, in order to comply with the NRC Order Pennsylvania must issue legally binding requirements...” Pennsylvania needs to replace the phrase “comply” with “ be compatible.”</p> <p>Pennsylvania needs to make the correction listed above in order to meet the Compatibility Category B designation assigned to NRC Order EA-05-090.</p> |
| 2             | PA Order<br>(11/20/06)<br>Attachment<br>B | NRC Order<br>EA-05-090 | 2005-3  | B        | <p>Page 4, IC3 c. - Insert “at the licensee’s location” following the word “possession”</p> <p>Pennsylvania needs to insert the words “at the licensee’s location” in order to meet the Compatibility Category B designation assigned to NRC Order EA-05-090.</p>  |
| 3             | PA Order<br>(11/20/06)<br>Attachment<br>B | NRC Order<br>EA-05-090 | 2005-3  | B        | <p>Page 4, IC3 d - Replace the words “originating licensee” with “originator”</p> <p>Pennsylvania needs to replace “originating licensee” with “originator” in order to meet the Compatibility Category B designation assigned to NRC Order EA-05-090.</p>   |
| 4             | PA Order<br>(11/20/06)<br>Attachment<br>B | NRC Order<br>EA-05-090 | 2005-3  | B        | <p>Page 4, IC3 d.2 - Replace the words “originating licensee” with “originator”</p> <p>Pennsylvania needs to replace “originating licensee” with “originator” in order to meet the Compatibility Category B designation assigned to NRC Order EA-5-090.</p>  |