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May 15, 2018

Michelle Beardsley  
Office of Nuclear Materials Safety and Safeguards  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555

### NRC REVISION TO MANAGEMENT DIRECTIVE 5.6

Dear Ms. Beardsley:

The Organization of Agreement States (OAS) Executive Board (Board) appreciates this opportunity to review NRC's revision to MD 5.6. For the most part, OAS agrees with the NRC revisions. There are only two outstanding issues that were not addressed. We have received many passionate responses from Agreement States on the MD 5.6 revision which are incorporated in our comments below.

1. The Board letter of January 12, 2018 asked for a mechanism for a state or region to appeal the findings of the Management Review Board (MRB). Several states took issue with this lack of an appeal process and that it appears that a state has no recourse when it disagrees with the decision of the MRB. There have been examples given where only one IMPEP team member recommended that a state go on monitoring and the MRB agreed, with seemingly no alternative for the state. Other states likened the MRB to the Supreme Court, in that there was nothing that could be done if the state or even several IMPEP team members disagreed with the MRB decision. As with the Supreme Court, the Board believes that dissenting opinions of team or MRB members should be documented so that the next IMPEP team members could be more informed to prevent repeating the same problematic issues.

The Board believes that as co-regulators, the NRC should consider having Agreement State voting members on MRBs (e.g. an NRC Chairperson with two NRC staff and two AS representatives). This would maintain an NRC majority but give more formal balance to the MRB membership/decisions.

The Board also recommends that the NRC establish a formal "Appeals Officer" position. The Board recommends this position could be part of the Executive Director duties.

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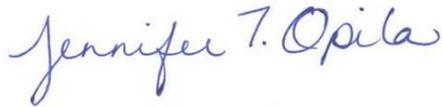
*Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin*

2. The Board letter of January 12, 2018 asked for more time in promulgating regulations. This was not addressed in the revision. At the very least, states believe consideration should be given as to why the rules were not promulgated on time. Was it because the Agreement State did not begin the rulemaking process, because the State did not prioritize the Agreement State rules, because the NRC changed or rescinded a Federal Code requirement during the promulgation period or because Agreement States had difficulty interpreting the changes which resulted in prolonged NRC reviews of draft and final versions?

One comment which we did not make initially, but would like to add here involves a wording change. When an Agreement State is given a rating of Satisfactory but Needs Improvement, the NRC finds the program to be “Adequate but needs improvement to protect public health and safety”. This sounds as if the state failed to protect public health and safety. The OAS believes that the wording should be revised to “Adequate to protect the public health and safety, but needs improvement”. The same words are used, but the connotation that the state is not adequately protecting the public health and safety is gone. We hope that you can make this small wording change that would have a positive impact for Agreement States.

We appreciate the chance to comment on the NRC’s revision to MD 5.6, and we hope you can consider these suggestions in the final document.

Sincerely,



For  
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