

CALIFORNIA RADIOACTIVE MATERIALS MANAGEMENT FORUM

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May 31, 2007

The Honorable John Laird, Chairman, and
Members, Conference Committee on the Budget
State Capitol
Sacramento, CA 95814

Dear Chairman Laird and Members,

I am writing on behalf of the California Radioactive Materials Management Forum (Cal Rad Forum) to respectfully request that the Conference Committee not approve language that would initiate a planning process for the transfer of the State's radiation control program from the Department of Public Health in the Health and Human Services Agency to the Department of Toxic Substances Control or other entity within CalEPA. (Issue 0530, L15, Radiation Regulation that is on the Conference Committee's Agenda for June 1st.)

Cal Rad Forum is an association of organizations that use radioactive materials. Our members include universities; utilities with nuclear power plants; medical centers; industries, including biotech and pharmaceutical companies; and professional societies.

The proposal to move the radiation control program will be disruptive. California is an "Agreement State" under the federal Atomic Energy Act with a radiation control program authorized by the U.S. Nuclear Regulatory Commission (USNRC). This program has been located within the Department of Health Services since 1962 when the Atomic Energy Commission — the predecessor agency to the USNRC — first authorized it. Moving the radiation control program to CalEPA would place it in an agency many of whose departments and boards draw their implementation and enforcement authority from the federal Environmental Protection Agency. However, by federal law, California's radiation regulatory program is authorized by, and operates under the oversight of, the USNRC. Pursuant to the federal Atomic Energy Act, this regulatory program must be compatible with that of the

USNRC. The proposed transfer risks jeopardizing California's status as an Agreement State in which case the radiation regulatory program would be run by the USNRC.

All aspects of the radiation regulatory program belong where they are — in a health agency. Regulators who oversee the State's radiation regulatory program are drawn from the technical discipline of health physics (not *eco*-physics or *enviro*-physics). We believe the current radiological regulatory program in the Department of Health Services is highly competent; any problems can be addressed within the existing organizational structure. We are reminded of the old saying, "If it ain't broke, don't fix it."

The transfer of radiation regulatory functions from the Department of Health Services to an environmental agency is likely to be expensive. In 2003, Senate Bill 201 proposed to transfer the functions of the Department's Radiologic Health Branch to Cal EPA. The Senate Appropriations Committee's Fiscal Summary of that bill recommended it be placed on the Committee's suspense file due to projected increased costs to the State. (SB 201 died on the suspense file.)

Finally, we are compelled to comment on the staff analysis prepared for the May 22nd hearing of Senate Budget Subcommittee #3 when the language in question was approved. The third bullet on page 103 does not accurately reflect the decision of the Sacramento Superior Court in 2002 when it set aside the license termination standard adopted by the Department of Health Services. The Court's action reflected a procedural concern, namely that the Department had not done its own Environmental Impact Report under CEQA but instead relied on the USNRC's Environmental Impact Statement under NEPA. There was no finding that the Department had adopted "lax radiological standards" as suggested by the analysis. Indeed, the standard adopted by the Department is the same as that used by the USNRC and thirty-six other states.

Cal Rad respectfully requests the Conference Committee to reject the proposed language initiating a process to move the State's radiation regulatory program from the Health and Human Services Agency to CalEPA.

Sincerely,

Alan Pasternak
Technical Director
Cal Rad Forum

cc: The Honorable Elaine Alquist, Chair, Senate Budget
Subcommittee #3
The Honorable Arnold Schwarzenegger, Governor
S. Kimberly Belshé, Secretary, Health and Human Services Agency
Sandra L Shewry, Director, Department of Health Services