

August 31, 2006

Terry O'Clair, Director
Division of Air Quality
North Dakota Department of Health
1200 Missouri Ave., Room 304
P.O. Box 5520
Bismark, ND 58506-5520

Dear Mr. O'Clair:

By letter dated April 28, 2003, we sent you the results of our review of the final changes to the North Dakota regulations which were submitted to the NRC by letter dated April 4, 2003. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 31, and 32, and the requirements of the General License (GL) amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. The review we conducted omitted a specific review of Sections 10 CFR Parts 31.5 and 31.6. The text of these sections was not revised by the GL amendment, but the compatibility designations were changed from Compatibility Categories C and D respectively, to Category B.

As noted in All Agreement States letter STP-05-072, dated September 28, 2005, NRC staff will continue to review Agreement State GL Device proposed and final rules, but will hold in abeyance any determination on those rules and compatibility of those rules, if the Agreement State has the essential elements of the NRC's rule and is more restrictive than the NRC's rule. For Agreement States without a GL Device rule or a GL Device rule less restrictive than the NRC rules, the staff will factor this determination into results of the NRC's review of the State's proposed and final rules and the compatibility findings during Integrated Materials Performance Evaluation Program (IMPEP) reviews.

We discussed our review of the GL Amendment with Kenneth Wangler on August 21, 2006. As a result of our re-review against the Compatibility Category B designation, we have no comments. We determined that North Dakota's GL amendment is neither more restrictive nor less restrictive, but is equivalent to the NRC's rule. This letter, including the SRS Data Sheet, is posted on the STP website: <http://www.hsr.gov/nrc/rulemaking.htm>.

Please note that we have limited our review to regulations required for compatibility and/or health and safety. The SRS Data Sheet summarizes our knowledge of the status of other North Dakota regulations, as indicated. Please let us know if you note any inaccuracies, or have any comments on the information contained in the SRS Data Sheet.

Mr. Terry O'Clair, Director

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August 31, 2006

If you have any questions regarding the re-review results, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact me, or Monica Orendi at (301) 415-3938 or by e-mail at MLO1@nrc.gov.

Sincerely

Dennis K. Rathbun, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

If you have any questions regarding the re-review results, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact me, or Monica Orendi at (301) 415-3938 or by e-mail at MLO1@nrc.gov.

Sincerely,

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Dennis K. Rathbun, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

Distribution:

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Editorial Suggestions

1. In 33-10-03-04-2.b.(3)(i)[d], "... in accordance with subparagraph 1..." should be replaced by "... in accordance with subparagraph 1..."
2. In 33-10-03-04-2.b.(3)(m)[3](C), "a representative of the general icensee under subparagraph 1" should be replaced by "a representative of the general icensee under subparagraph 1."

STATE REGULATION STATUS

State: North Dakota
 [1 Amendment reviewed identified by a ★ at the
 beginning of the equivalent NRC requirement.]

Tracking Ticket Number: 6-16
 Date: August 31, 2006

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / License Condition (LC) ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1	F ML031010635	N 04/28/03 ML031220151	3/1/2003
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Standards for Protection Against Radiation-Part 20	56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)	1991-3	F	N 10/17/97	5/1/98
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 45566; (none)	1992-2			Not required ³
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Licensing and Radiation Safety Requirements for Irradiations-Part 36	58 FR 7715; (7/1/96)	1993-2			Not Applicable SECY-95-112 ⁴ 7/1/1995
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			Not Applicable SECY-95-112 ⁴
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618; (none)	1994-1			Not required ³

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Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 65243; 60 FR 322; (1/1/98)	1995-1	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983; (3/1/98)	1995-3	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F ML031010635	N 04/28/03 ML031220151	3/1/2003
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724; (4/1/99)	1996-1	F ML031010635	N 04/28/03 ML031220151	3/1/2003
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2			Not required ³

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Termination or Transfer of Licensed Activities: Record keeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea-Part 30	62 FR 63634; (1/2/01)	1997-7	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773; (2/12/01)	1998-1	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2	F ML031010635	N 04/28/03 ML031220151	Not required ³
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required ³

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Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393; (10/26/01)	1998-5	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2	F ML031010635	N 04/28/03 ML031220151	Not required ³
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524; (2/2/03)	1999-3	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML031010635	N 04/28/03 ML031220151	3/1/2003
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	F ML031010635	N 04/28/03 ML031220151	3/1/2003
★Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material-Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F ⁷ ML031010635	N 08/31/06 ML062410064	3/1/2003
Revision of the Skin Dose Limit-Part 20	67 FR 16298; (4/5/05)	2002-1	F ML031010635	N 04/28/03 ML031220151	3/1/2003
Medical Use of Byproduct Material-Parts 20, 32, 35	67 FR 20249; (10/24/05)	2002-2	F ML031010635	N 04/28/03 ML031220151	3/1/2003

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Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1			
Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.	69 FR 3697; (10/01/07)	2004-1			
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1			
Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	70 FR 16336; 71 FR 1926 (4/29/08)	2005-2			
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁶	70 FR 72128; (12/1/05)	2005-3	LC ML052620195	N 09/26/2005 ML052690322	
Minor Amendments - Parts 20, 30, 32, 35, 40, and 70	71 FR 15005	2006-1			

1. Or other generic Legally Binding Requirements.
2. (Y/N) Y means “Yes,” there are comments in the review letter that the State needs to address. N means “No,” there are no comments in the review letter.
3. Not required means these regulations are not required for purposes of compatibility.
4. A State need not adopt a specific regulation if the State has no licensees that would be subject to that regulation. See: “Final Policy Statement on Adequacy and Compatibility of Agreement State Programs,” III.1. Time Frame for Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number
6. By letter dated September 2, 2005, from Paul H. Lohaus, Director, Office of State and Tribal Programs, Agreement States were given 90 days to issue legally binding requirements satisfying the requirements of NRC Order EA-05-090.
7. A re-review was completed on this item due to the change in compatibility category of 31.5 and 31.6. More information can be found in the All Agreement States letter STP 05-072.