

28 October 1999

Mr. Peter Chiefari
Assistant Division Director, Safety & Health
New York State Dept. of Labor
Building #12
State Office Building Campus
Albany, NY 12240

Subject: Application for Variation from Section 38.15(b) of 12 NYCRR 38 for Activities to
be Conducted in New York

Dear Mr. Chiefari:

As described in Section 38.2 of 12 NYCRR 38, we request a variation from a portion of the regulations. Specifically, we request a variation from Section 38.15(b), which states:

Any holder of a license or permit issued by the State Department of Health, the New York City Department of Health, the United States Nuclear Regulatory Commission, any Agreement State, or any licensing nonagreement State which authorizes the holder to manufacture, install or service a device of the type which is generally licensed and specified in Table 3, Item (b) of this Part (rule), may install or service such device without obtaining a license from the commissioner, provided that:

- (1) *such person shall file a report with the commissioner within 30 days after the end of each calendar quarter in which any device is transferred to or installed within the commissioner's jurisdiction. Such report shall contain the name and address of each person receiving such a device, shall identify the type of device or devices so transferred, and shall state the quantity and type of radioactive material contained in such device or devices;*
- (2) *any such device is installed and serviced in accordance with the terms of the license or permit issued to such person;*
- (3) *such person shall assure that any labels required to be affixed to any such device shall bear a statement that reads "Removal of this label is prohibited"; and*

- (4) *the person to whom such holder transfers any such device or on whose premises such holder installs or services any such device has a copy of the general license requirements or the equivalent requirements outlined in Table 3, Item (b) of this Part (rule).*

While in all other ways remaining subject to each condition stated in Section 38.15(b) above, we request permission to conduct the described activities **involving any device which New York, any other Agreement State, or the Nuclear Regulatory Commission has approved for distribution to General Licensees.**

Reasons for request:

1. Apparently unintended effect of recently adopted regulations: With the New York's recent elimination of certain devices from those that may be held under a General License, Section 38.15(b) no longer authorizes us to provide installation or on-going service to New York users of several of our devices (e.g. devices containing > 1 mCi of Sr-90 or Am-241).

The New York Department of Labor used a notice (dated 9 June 1999; copy attached) to inform manufacturers and distributors of generally licensed devices about eliminating the general license for certain devices. From the content of that notice and discussions with Radiological Health Unit staff members, we understand that the Department of Labor did not specifically intend to alter the regulations that had permitted manufacturers and distributors to conduct service to devices in New York.

2. Operating under reciprocity not feasible: Reciprocity [Section 38.15(a)] normally requires filing for permission a minimum of seven days in advance of the activity and, is limited to 30 days of work per calendar year. In many cases, we have employees who live and report to work on a daily basis at end-user sites in New York State. The 30-day limit is insufficient to permit the required tests for source leakage and for shutter and indicator function. Advance scheduling is also nearly impossible because (in many cases), the device is essential to the customer's process and is kept running as many hours per day as possible. This means that the safety tests are "scheduled" on the fly when there is an interruption in the customer's operation.

For these reasons, the reciprocity provisions are too restrictive to be useful on an ongoing basis.

3. Not productive in terms of safety: In order to continue to provide service to all of our customers in New York, we will need to apply for and obtain Specific Licenses. Since we already have very detailed licenses approved by NRC or by other Agreement States, we see no improvement to safety that is likely to result from this process. Radiation Safety

personnel employed by the Department of Labor and by manufacturer/distributors will spend time on the license application and on each later amendment and renewal. Whether regulator or device-distributor, that time could far more be productively be spent on issues that will truly improve safety.

Note that each person listed below represents a **separate** NRC or Agreement State specific licensee and this exception request is on behalf of each of those licensees. (Additional copies of the letter with the individual signatures will follow this one.)

We hope you will approve our request. Please contact us if we can provide further information on this request or the nature of our businesses.

Sincerely,

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CC: Charles Burns, Associate Radiophysicist, NY Dept. of Labor

Attachment: *Notice to Manufacturers & Distributors of Radioactive Sources Under General License (9 June 1999)*