

April 25, 2006

Barbara Youngberg, Chief
Bureau of Hazardous Waste and Radiation Management, Radiation Section
Division of Solid and Hazardous Materials
New York State Department of Environmental Conservation

Dear Ms. Youngberg:

We have reviewed Section 175.30 of the existing New York State Penal Code provided in your letter, received by our office on March 17, 2006. In the letter you indicated that the enforcement authority provided in Section 175.30 of the New York State Penal Code meets the essential objectives of the Deliberate Misconduct Rule (RADS ID 1998-1). The enforcement authority provided in Section 175.30 was reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 40, 50, 52, 60, 61, 70, 71, 72, and 150, and the requirement of the amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulation with you on March 21, 2006.

As a result of our review, we have one comment that has been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. We have determined that if the regulation is revised, incorporating our comment and without other significant change, it would meet the compatibility and health and safety categories established in the Office of State and Tribal Program (STP) Procedure SA-200.

We request that when you revise your regulations to address our comment, a copy of the "as published" regulations 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 New York, in response to our comment and provide a copy to STP.

The SRS Data Sheet summarizes our knowledge of the status of other New York State Department of Environmental Conservation 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. This letter, including the SRS Data Sheet, is posted on the STP website:
<http://www.hrsd.ornl.gov/nrc/rulemaking.htm>.

If you have any questions regarding the review results, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact me, or Kevin Hsueh at 301-415-2598 or by e-mail at KPH@NRC.GOV.

Sincerely,

IRA By KNSchneider For

Dennis Rathbun, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

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IRA By KNSchneider For

Dennis Rathbun, Deputy Director
Office of State and Tribal Programs

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NAME	KHsueh	STreby	DKRathbun
DATE	4/10/06*	4/21/06*	4/25/06*

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COMPATIBILITY COMMENTS ON NEW YORK STATE REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	§175.30	30.10, 40.10, 70.10, 71.8	1998-1	C	<p>Deliberate Misconduct by Unlicensed Persons</p> <p>The enforcement authority provided in the New York State Penal Code does not meet two of the essential objectives of the NRC's deliberate misconduct regulation. First, the Penal Code only applies to an individual who submits false information to a public office or officer, and does not create a penalty for the submission of false information to a licensee, applicant, certificate holder, contractor, or sub-contractor. Second, the Penal Code would not prohibit deliberate misconduct by an individual that causes or would cause a licensee, applicant, or certificate holder to be in violation of a rule, regulation, or order, or any term, condition or limitation of the license. The New York State Department of Environmental Conservation should adopt the essential objectives of this regulation in the appropriate New York regulations or legally binding requirements to meet the Compatibility Category C designation assigned to 10 CFR 30.10, 40.10, 70.10 and 71.8.</p>

STATE REGULATION STATUS

State: New York State Department of Environmental Conservation

Tracking Ticket Number: 6-64

[1 amendment reviewed identified by a i at the beginning of the equivalent NRC requirement.]

Date: 4/25/06

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / License Condition (LC) ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			Not Applicable SECY-95-112 ⁴
ANT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required ³
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 11/6/97	3/24/94
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4			
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			Not Applicable SECY-95-112 ⁴
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			
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2			Not Applicable SECY-95-112 ⁴
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 Applicable SECY-95-112 ⁴
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			Not Applicable SECY-95-112 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3			Not Applicable SECY-95-112 ⁴
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			Not Applicable SECY-95-112 ⁴

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Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2			Not Applicable SECY-95-112 ⁴
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3			7/9/97
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4			Superseded by 62 FR 28948 due 6/27/00
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5			
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6			Not Applicable SECY-95-112 ⁴
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7			Not Applicable SECY-95-112 ⁴
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724 (4/1/99)	1996-1			7/9/97
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
Termination or Transfer of Licensed Activities: Record keeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3			
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1			8/20/04
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			Not Applicable SECY-95-112 ⁴
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3			Not Applicable SECY-95-112 ⁴
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			Not Applicable SECY-95-112 ⁴
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6			

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Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7			Not Applicable SECY-95-112 ⁴
i Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 72, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	F ML061150561	Y 04/25/06 ML061150021	
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2			Not required ³
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4			Not Applicable SECY-95-112 ⁴
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5			
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML060330210	N 02/28/06 ML060580084	
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not Applicable SECY-95-112 ⁴
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			Not required ³
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524 (2/2/03)	1999-3			Not Applicable SECY-95-112 ⁴
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1			Not Applicable SECY-95-112 ⁴
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2			Not Applicable SECY-95-112 ⁴
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1			Not Applicable SECY-95-112 ⁴
Revision of the Skin Dose Limit -Part 20	67 FR 16298; 4/5/05	2002-1			

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Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; 10/24/05	2002-2			Not Applicable SECY-95-112 ⁴
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1			Not Applicable SECY-95-112 ⁴
Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.	69 FR 3697; (10/01/07)	2004-1	F ML060330210	N 02/28/06 ML060580084	
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1			Not Applicable SECY-95-112 ⁴
Medical Use of Byproduct Material--Recognition of Specialty Boards - Part 35	70 FR 16335; 71 FR 1926(04/29/08)	2005-2			Not Applicable SECY-95-112 ⁴
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁶	70 FR 72128; (12/1/05)	2005-3			Not Applicable SECY-95-112 ⁴

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.