

March 27, 2007

Patricia Gardner, Manager  
Bureau of Environmental Radiation  
New Jersey Department of Environmental Protection  
P.O. Box 415  
Trenton, NJ 08625-0415

Dear Ms. Gardner:

We have reviewed the proposed revision to the New Jersey Department of Environmental Protection's, Radiation Protection Programs' Rules (N.J.A.C. 7:28-1 et seq.), received by our office on February 27, 2008. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 19, 20, 30, 31, 32, 34, 35, 36, 39, 40, 61, 70, 71, and 150. We discussed our review of the regulations with Jenny Goodman on March 27, 2008.

As a result of our review, we have eight comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, a finding that the New Jersey regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final New Jersey regulations. However, we have determined that if your proposed regulations were adopted, incorporating our comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-200. We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in FSME Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes, and provide a copy to Division of Materials Safety and State Agreements, FSME.

Please let us know if you note any inaccuracies, or have any comments on the information contained in the Enclosure. This letter is posted on the FSME website:

<http://www.hsrdoernl.gov/nrc/rulemaking.htm>.

If you have any questions regarding the comments, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact Kathleen Schneider, Senior Regulation Review Coordinator at (301) 415-2320 (email: [kxs@nrc.gov](mailto:kxs@nrc.gov)) or Monica Orendi at (301) 415-3938 (email: [mlo1@nrc.gov](mailto:mlo1@nrc.gov)).

Sincerely,

**\ RA by ADWhite \**

Robert J. Lewis, Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials and  
Environmental Management Programs

Enclosures:  
As stated

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 Division of Materials Safety and State Agreements  
 Office of Federal and State Materials and  
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Enclosures: As stated

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**COMPATIBILITY COMMENTS ON NEW JERSEY PROPOSED REGULATIONS**

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	7:28-12.12 (b)(2)(iii)	20.1403	N/A	C	<p><b>Criteria for license termination under restricted use</b></p> <p>New Jersey includes the term "Federal" in 7:28-12.12(b)(2)(iii).</p> <p>New Jersey needs to remove this term in order to meet the Compatibility Category C designation assigned to 10 CFR 20.1403.</p>
2	7:28-51.1(b)	30.41(a)(6)	N/A	NRC	<p><b>Transfer of byproduct material</b></p> <p>New Jersey adopts by reference 30.41(b)(6) which is a Compatibility Category NRC. This is a NRC program element that addresses areas of regulation that cannot be relinquished to Agreement States pursuant to the Atomic Energy Act or provisions of 10 CFR regulations. The State should not adopt 10 CFR 30.41(b)(6).</p> <p>New Jersey should not incorporate by reference 10 CFR 30.41(b)(6) in order to meet the Compatibility Category NRC designation assigned to 10 CFR 30.41(b)(6).</p> <p><b>Comments Stands: New Jersey attempts to resolve this comment in 7:28-51.1(b)(6) however it states that they do not adopt 10 CFR 30.41(b)(6). This should be changed to say that they do not adopt 10 CFR 30.41(a)(6) by reference.</b></p>
3	7:28-53.1	32.11	N/A	NRC	<p><b>Introduction of byproduct material in exempt concentrations into products or materials and transfer of ownership or possession: Requirements for license</b></p> <p>New Jersey incorporates 10 CFR 32.11 by reference. However due to a</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>rule change in 2007 10 CFR 32.11 was changed back to a Compatibility category NRC and should therefore not be incorporated by reference.</p> <p>New Jersey needs to not incorporate 10 CFR 32.11 by reference in order to meet the Compatibility Category NRC designation assigned to 10 CFR 32.11.</p>
4	7:28-53.1	32.12	N/A	NRC	<p><b>Same: Records and material transfer reports</b></p> <p>New Jersey incorporates 10 CFR 32.12 by reference. However due to a rule change in 2007 10 CFR 32.12 was changed back to a Compatibility category NRC and should therefore not be incorporated by reference.</p> <p>New Jersey needs to not incorporate 10 CFR 32.12 by reference in order to meet the Compatibility Category NRC designation assigned to 10 CFR 32.12.</p>
5	7:28-58.1(b)(16)	40.41 (d), (e)(1), (e)(3), and (g)	N/A	NRC	<p><b>Terms and conditions of licenses</b></p> <p>New Jersey incorporates 10 CFR 40.41 (d), (e)(1), and (e)(3) by reference. These are Compatibility Category NRC and should not be incorporated by reference.</p> <p>New Jersey needs to amend 7:28-58.1(b)(16) to state "10 CFR 40.41(d), (e)(1), (e)(3), and (g) Terms and..." in order to meet the Compatibility Category NRC designation assigned to 10 CFR 40.41 (d), (e)(1), (e)(3), and (g).</p>
6	7:28-59.1 (b)(3) and (c)(18-20)	61.16	N/A	NRC	<p><b>Other Information</b></p> <p>Although New Jersey states that they do not incorporate 10 CFR 61.16 by reference in 7:28-59.1(b)(3), they state in 7:28-59.1(c)(18-20) that this section is incorporated by reference</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>with specified changes.</p> <p>New Jersey needs to keep 7:28-59.1(b)(3) and delete 7:28-59.1(c)(18-20) in order to meet the Compatibility Category NRC designation assigned to 10 CFR 61.16.</p>
7	7:28-59.1 (b)(4) and (c)(22-23)	61.23(i)(j)	N/A	NRC	<p><b>Standard Issuance of a License</b></p> <p>Although New Jersey states that they do not incorporate 10 CFR 61.23(j) by reference in 7:28-59.1(b)(4), they state in 7:28-59.1(c)(22-23) that this section is incorporated by reference with specified changes.</p> <p>New Jersey needs to keep 7:28-59.1(b)(4) and delete 7:28-59.1(c)(22-23) in order to meet the Compatibility Category NRC designation assigned to 10 CFR 61.23(i)(j).</p>
8	7:28-62.1 (b)(14)	150.32	N/A	NRC	<p><b>Funds for reclamation or maintenance of byproduct material</b></p> <p>New Jersey has a wrong reference in 7:28-62.1(b)(14). It should read "10 CFR 150.32, Funds for...".</p> <p>New Jersey needs to make the above change in order to be Compatible with 10 CFR 150.32.</p>