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STATE OF ALABAMA DEPARTMENT OF
PUBLIC HEALTH

Donald E. Williamson, MD
State Health Officer

October 15, 2009

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Secretary, U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemaking and Adjudications Staff

Dear Sir:

I would like to take this opportunity to comment on the proposed rule "Limiting the Quantity of Byproduct Material in a Generally Licensed Device."

Before I offer my thoughts on the specific questions for which you requested comments, I would like to discuss an additional subject that is not included in this proposed rulemaking, specifically, that general licensed devices should include only fixed devices and not portable, transportable, or movable devices.

Currently, the NRC, and some Agreement States, allow devices that are portable, or which are incorporated into a mobile system (such as density or flow rate gauges on slurry trucks or dredge barges) to be possessed and used under a general license (GL). One of the primary areas of concern for GL devices is accountability. Later in my comments you will find examples of GL devices that have been lost in Alabama. However, I believe the text in Section A.4.3.1 adequately states my concerns regarding the approval of portable GL devices:
"Under the current GL regulatory system, a general licensee would not be subject to the same regulatory controls (i.e., prelicensing reviews, inspection, safety and security requirements) as specific licensees possessing similar quantities of radioactive material."... "The SL regulatory controls would improve not only the ability to prevent any theft or diversion of these materials, but would also help prevent or detect any inadvertent loss of such devices that could potentially impact public health and safety."

The Alabama Office of Radiation Control has documented incidents where GL devices have been lost or have been found at scrap dealers and open trash piles. To view these incidents, please note the following Item Numbers in the NMED database: 030412, 040255, 060171, 080800, and 090473.

It is my opinion that, because of the increased security and accountability requirements of a specific license (SL), portable devices, or devices that are part of a mobile system, should only be possessed under the terms of a SL.

I understand the basis for using the IAEA source categorization scheme to determine the maximum GL source thresholds. However, what are the specific licensing thresholds for those sources that are not included in the IAEA source categorization scheme, but which are currently approved for general license distribution?

As described above, there have been documented accountability problems with GL devices in Alabama. While we have no evidence that these incidents resulted in doses above 100 millirem to any individual, it is conceivable that such exposures might easily occur. A review of incidents involving GL devices in the NMED

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database would be helpful in determining if the SL activity thresholds should be lower than those proposed in this rule.

I am not in agreement with the proposed language in 10 CFR 31.5(b)(3). I do not see any need, neither for health and safety nor security, to require individuals who possess GL devices, and who also possess a SL, to add the GL devices to the SL. While we do encourage the specific licensee to add registered GL devices to their SL, we do not require it. Doing so sets up a dual standard. If the device may be possessed as a GL device, it makes no sense to require its listing on a SL. If such is required, then devices possessed under a GL should be disallowed. From an inspection standpoint, if a specific licensee possesses and uses registered GL in a safe manner, citing them for not amending their SL to include these devices is a useless waste of everyone's time. If the NRC decides to include this text, the compatibility category should not exceed a "D".

I applaud the decision to change the compatibility categories for ¶ 31.6 and 31.5(c)(13)(i) from "B" to "C", and believe these changes are necessary for acceptance of the proposed rule changes. You asked for comments regarding whether a change in compatibility would result in any significant transboundary issues. Accountability of radioactive material is a fundamental requirement of the GL process. Portable devices are more likely to be lost or stolen than a fixed gauge at a single site. Allowing a portable device to be possessed under a GL greatly increases accountability concerns. In addition, specific licensure would allow license writers and inspectors for NRC and Agreement States to monitor if and when the licensee accumulates devices in excess of IAEA Category 2 levels. This would provide the regulatory staff with a mechanism for ensuring that those licensees are appropriately following the more stringent increased control regulations. Therefore, I do not believe that this would cause any transboundary issues, undue hardships or confusion when it comes to reciprocity. The devices will now be specifically licensed and should be treated that way. This would greatly simplify procedures for both regulators and the regulated. Compatibility "C" gives states the latitude to make more restrictive requirements, and allows states to maintain better accountability of all GL devices. This results in increased public health and safety.

Regarding GL service companies and reciprocity, I offer the following. Currently in Alabama there are several facilities that possess both SL and GL devices. It does not make sense to require reciprocity for a service company when they enter a state to work on a SL device, but not require the same company to request reciprocity when they come into a state to service a GL device, particularly when it is possible that the GL device may pose a greater radiation safety hazard than the SL device. Therefore, a compatibility level of "C" allows states to have more restrictive requirements that make good health physics sense, and maintain a higher level of radiation health and safety.

Thank you again for the opportunity to comment on this proposed rule.

Sincerely,

David Walter

David Walter
Radioactive Material Licensing
Alabama Office of Radiation Control

Rulemaking Comments

From: David.Walter@adph.state.al.us
Sent: Thursday, October 15, 2009 8:16 AM
To: Rulemaking Comments
Subject: Comments on Proposed 10 CFR Part 31 (GL Rule)
Attachments: GL Rule Comments.doc

Please find attached my comments.

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Visit our web site at www.adph.org/radiation

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