[FR Doc. Z9–23375 Filed 10–7–09; 8:45 am]
BILLING CODE 1301–00–D

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation Training Division

[OMB Number 1110–NEW]

FBI National Academy Level I Evaluation Proposed Collection, Comments Requested

ACTION: 60–Day Notice of Information Collection Under Review: Approval of a New Collection.

FBI National Academy Level 1 Evaluation: Student Course Questionnaire.

FBI National Academy: General Remarks Questionnaire.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Training Division's Office of Technology, Research, and Curriculum Development (OTRCD) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until December 7, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact *Candace Matthews, Evaluation Program Manager, Federal Bureau of Investigation, Training Division, Curriculum Development and Evaluation Unit, FBI Academy, Quantico, Virginia 22135 or facsimile at (703) 632–3111.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

1. *Type of Information Collection:* Approval of a New Collection.

2. *Title of the Forms:*

FBI National Academy Level 1 Evaluation: Student Course Questionnaire.

FBI National Academy: General Remarks Questionnaire.

3. *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–XXXX.

Sponsor: Training Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

4. *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: FBI National Academy students that represent State and local police and sheriffs' departments, military police organizations, and Federal law enforcement agencies from the United States and over 150 foreign nations.

Brief Abstract: This collection is requested by FBI National Academy. These surveys have been developed to measure the effectiveness of services that the FBI National Academy provides. We will utilize the students' comments to improve upon the current curriculum.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Approximately 1,020 FBI National Academy students per year will respond to two types of questionnaires. (1) FBI National Academy Level 1 Evaluation: Student Course Questionnaire and (2) FBI National Academy: General Remarks Questionnaire. It is predicted that we will receive a 75% respond rate for both surveys. Each student will respond to approximately six to seven Student Course Questionnaires—one for each class they have completed. The average time for reading the directions to each questionnaire is estimated to be 2 minutes; the time to complete each questionnaire is estimated to be approximately 20 minutes. Thus the total time to complete the Student Course Questionnaire is 22 minutes.

For the FBI National Academy: General Remarks Questionnaire, students will respond to one questionnaire. The average time for reading the directions to this questionnaire is estimated to be 2 minutes; the time to complete each questionnaire is estimated to be approximately 10 minutes. Thus the total time to complete the General Remarks Questionnaire is 12 minutes. The total hour burden for both surveys is 2,822 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:*

The average hour burden for completing all the surveys combined is 2,822 hours.

If additional information is required, contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: October 5, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–24307 Filed 10–7–09; 8:45 am]
BILLING CODE 4410–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0142]

State of New Jersey: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Agreement Between the Nuclear Regulatory Commission and the State of New Jersey

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Agreement between the U.S. Nuclear Regulatory Commission and the State of New Jersey.

SUMMARY: This notice is announcing that on September 2, 2009, Gregory B. Jaczko, Chairman of the U.S. Nuclear Regulatory Commission (NRC or Commission), and on September 23, 2009, Governor Jon S. Corzine, of the State of New Jersey, signed an Agreement as authorized by Section 274b of the Atomic Energy Act of 1954, as amended (the Act). The Agreement provides for the Commission to discontinue its regulatory authority and for New Jersey to assume regulatory authority over the possession and use of byproduct material as defined in

Sections 11e.(1), 11e.(3), and 11e.(4) of the Act, source material, special nuclear materials (in quantities not sufficient to form a critical mass), and the regulation of land disposal of byproduct, source, or special nuclear material waste received from other persons. Under the Agreement, a person in New Jersey possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the **Federal Register** (FR) and are codified in the Commission's regulations as 10 CFR part 150. The Agreement is published here as required by Section 274e of the Act.

DATES: The effective date of the Agreement is September 30, 2009.

ADDRESSES: You can access publicly available documents, including public comments related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The ADAMS Accession numbers for the request for an Agreement by the Governor of New Jersey, including all information and documentation submitted in support of the request, and the NRC Draft Staff Assessment are: ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, ML090770116, and ML091400097.

FOR FURTHER INFORMATION CONTACT: Torre Taylor, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–7900; e-mail: *torre.taylor@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC published the draft Agreement in the **Federal Register** for comment once each week for 4 consecutive weeks on May 27, 2009 (74 FR 25283), June 3, 2009 (74 FR 26739), June 10, 2009 (74 FR 27572), and June 17, 2009 (74 FR 28728), as required by the Act. The comment period ended on June 26, 2009. The Commission received six comment letters—two supporting the Agreement, two opposed, one that supported the rationale of States assuming regulatory authority but not the fee differences that will occur, and one general comment that did not express support or opposition. The comments did not affect the NRC staff's assessment, which finds that the New Jersey Agreement State program is adequate to protect public health and safety and compatible with the NRC's program. The proposed New Jersey Agreement is consistent with Commission policy and thus meets the criteria for an Agreement with the Commission.

After considering the request for an Agreement by the Governor of New Jersey, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the New Jersey Department of Environmental Protection, the NRC staff completed an assessment of the New Jersey program. The agency made a copy of the staff assessment available in the NRC's Public Document Room (PDR) and electronically on NRC's Web site. Based on the staff's assessment, the Commission determined on September 2, 2009, that the proposed New Jersey program for control of radiation hazards is adequate to protect public health and safety, and compatible with the Commission's program.

Dated at Rockville, Maryland, this 2nd day of October 2009.

For the Nuclear Regulatory Commission.

J. Samuel Walker,

Acting Secretary of the Commission.

An Agreement Between the United States Nuclear Regulatory Commission and the State of New Jersey for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (hereinafter referred to as the Act), to enter into Agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (2), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of New Jersey is authorized under The Radiation Protection Act, N.J.S.A. 26:2D–1, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of New Jersey certified on October 16, 2008, that the State of New Jersey (the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on September 2, 2009, that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Act;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State acting on behalf of the State as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials;
5. Special nuclear materials in quantities not sufficient to form a critical mass; and
6. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;

4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;

5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

6. The regulation of byproduct material as defined in Section 11e.(2) of the Act.

Article III

With the exception of those activities identified in Article II.1 through 4, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible.

The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on September 30, 2009, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this 8th day of September, 2009.

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION

/RA/

Gregory B. Jaczko, Chairman.

Done at Trenton, New Jersey, in triplicate, this 23rd day of September, 2009.

FOR THE STATE OF NEW JERSEY

/RA/

Jon S. Corzine, Governor.

[FR Doc. E9–24281 Filed 10–7–09; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 14, 2009, 10 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Executive Committee Reports

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: October 5, 2009.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. E9–24372 Filed 10–6–09; 11:15 am]

BILLING CODE 7905–01–P

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Proposed Information Collection Activities

ACTION: Notice and request for comments.

SUMMARY: The Recovery Accountability and Transparency Board (Board) invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 7, 2009.

ADDRESSES: Send all comments to Jennifer Dure, Office of General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60 days' notice to the public for comment on information collection activities. Specifically, the Board invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for the Board to properly execute its functions; (ii) the accuracy of the Board's estimates of the burden of the information collection activities; (iii) ways for the Board to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for the Board to minimize the burden of information collection activities on the public. The Office of Management and Budget (OMB) has approved, on an emergency basis, this collection of information.

October 14, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	
	)	
SHIELDALLOY METALLURGICAL	)	Docket No. 40–7102–MLA
CORPORATION	)	ASLBP No. 07–852–01–MLA–BD01
(License Amendment Request for	)	
Decommissioning the Newfield Facility)	)	
	)	

SHIELDALLOY'S AMENDED MOTION FOR STAY PENDING JUDICIAL REVIEW OF COMMISSION ACTION TRANSFERRING REGULATORY AUTHORITY OVER NEWFIELD, NEW JERSEY FACILITY TO THE STATE OF NEW JERSEY [1]

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(a), Shieldalloy Metallurgical Corporation ("Shieldalloy"), holder of Source Materials License No. SMB-743 for a facility in Newfield, New Jersey ("Newfield Facility"), respectfully moves the Commission to stay, pending judicial review, the effectiveness of the transfer of regulatory authority over the Newfield Facility to the State of New Jersey ("New Jersey" or "State"). Regulatory authority over the Newfield Facility and certain other NRC-licensed facilities in New Jersey was transferred to the State effective

[1] This amended motion is filed to enclose and make reference to a relevant document (letter from Patricia Gardner to Hoy Frakes dated October 8, 2009, Exhibit B hereto) which was received by Shieldalloy's counsel shortly after Shieldalloy's "Motion For Stay Pending Judicial Review Of Commission Action Transferring Regulatory Authority Over Newfield, New Jersey Facility to the State of New Jersey" was filed on October 13, 2009. The changes made by in the amended motion appear on pages 6 and 15 of the text and are identified in redline.

September 30, 2009 pursuant to an agreement between the Commission and the State ("the Agreement").[2]

As grounds for this motion, Shieldalloy states that the NRC failed to meet the requirements of Section 274b of the Atomic Energy Act ("AEA"), 42 U.S.C. § 2021(b), by finding that the New Jersey radiation control program is compatible with the NRC's regulatory program when in reality it is not. Accordingly, New Jersey's application to become an Agreement State, at least with respect to the Newfield Facility, should have been denied as a matter of law.

Shieldalloy intends to seek judicial review of the NRC's decision to enter into the Agreement with New Jersey to the extent that it transfers regulatory authority over the Newfield Facility to the State. That review will be based on the Administrative Orders Review Act, better known as the Hobbs Act, 28 U.S.C. § 2342(4). As discussed below, the relevant criteria to decide whether to grant a stay pending judicial review of the effectiveness of the transfer of regulatory authority are satisfied and a stay should accordingly be issued.

DISCUSSION

A. FACTUAL BACKGROUND

Section 274b of the AEA authorizes the NRC to enter into agreements that transfer regulatory authority over certain radioactive materials to the States. The NRC is permitted to enter into such an agreement with a State if the NRC "finds that the State program is ... compatible with the Commission's program for regulation of such materials, and that the State

---

[2] Counsel for the NRC Staff ("Staff") advised Shieldalloy and the Atomic Safety and Licensing Board of the transfer of regulatory authority on October 1, 2009. Staff's Fifteenth Status Report (October 1, 2009) at 1. The Staff's filing also stated that the Staff had discontinued its review of a decommissioning plan for the Newfield Facility submitted by Shieldalloy and had forwarded files associated with its review to New Jersey. Id. at 2. The Agreement between the NRC and New Jersey, as executed, was published in the Federal Register on October 8, 2009. 74 Fed. Reg. 51882.

program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement." 42 U.S.C. § 2021(b). The AEA defines the categories of materials that NRC may transfer as including, *inter alia*, source materials (as defined by AEA § 11.z), such as those currently present at the Newfield Facility. Id.

New Jersey submitted a draft application to become an Agreement State to the NRC in 2006,[3] seeking the transfer of regulatory authority from the NRC to New Jersey over several categories of materials, including source materials. The Staff conducted a completeness review of the draft application, and provided several rounds of comments to the New Jersey Department of Environmental Protection ("NJDEP").[4] On October 16, 2008, the Governor of New Jersey submitted a formal agreement application, certifying that "the State of New Jersey has an adequate program for the control of radiation hazards covered by this proposed agreement."[5] This submittal initiated the final phase of the NRC's review of New Jersey's application.

Previously, New Jersey had issued for comment, and then promulgated in final form on September 15, 2008, a set of regulations, "Radiation Protection Program Rules" (N.J.A.C. 7:28-1.1 et seq.), intended to support New Jersey's application to become an Agreement State ("NJDEP Regulations"). SMC submitted comments on the proposed regulations on July 17, 2008, identifying a number of deficiencies in New Jersey's Radiation Protection Program ("the New Jersey Program"). New Jersey rejected SMC's comments. 40 N.J.R. 5196(b) (September 15, 2008).

---

[3] NJDEP letter to NRC dated September 17, 2007.

[4] NRC letter to the NJDEP dated August 9, 2006; NRC letter to the NJDEP dated August 3, 2007; NRC letter to the NJDEP dated January 11, 2008; NRC letter to the NJDEP of March 27, 2008; NRC letter to the NJDEP dated September 17, 2008.

[5] Letter from Gov. Jon S. Corzine to NRC Chairman dated October 16, 2008.

On the recommendation of the Staff, the Commission, through Staff Requirements Memorandum "SECY-09-0065, Proposed Agreement between the State of New Jersey and the Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended" (May 18, 2009), published notices of the proposed Agreement between the NRC and New Jersey in the *Federal Register*, requesting comments from the public. Four such notices were published. In response to the *Federal Register* notices, Shieldalloy submitted comments asserting that the New Jersey Program was incompatible in a number of respects with the NRC's program for the regulation of radioactive materials. Letter dated June 11, 2009 from Hoy Frakes (Shieldalloy) to Michael T. Lesar (Staff) and attachments ("Shieldalloy Comments on Agreement").

On August 18, 2009 the Staff submitted to the Commissioners SECY-09-0114, "Section 274B Agreement with the State of New Jersey," in which the Staff requested Commission approval of the proposed Agreement with New Jersey. SECY-09-0114 referenced the comments it had received in response to the *Federal Register* notices. The Staff advised the Commission that the comments it had received "did not provide any new information that would change the conclusions in the staff assessment of the New Jersey program" and that the Staff "has not changed the assessment in response to the comments." SECY-09-0114 at 2. Accordingly, the Staff recommended approval of the Agreement with New Jersey.

Enclosure 2 to SECY-09-0114 contained the Staff's response to the comments it had received. The Staff rejected, on various grounds, the comments submitted by Shieldalloy. As further discussed below, such rejection was erroneous.

Acting on the Staff recommendations in SECY-09-0114, on September 2, 2009, Gregory B. Jaczko, NRC Chairman, signed the Agreement, and on September 23, Jon S. Corzine, Governor of New Jersey, signed it. 74 Fed. Reg. 51,882 (October 8, 2009). The Agreement

became effective on September 30, 2009, and transferred to New Jersey regulatory authority over, *inter alia,* source materials including those at the Newfield Facility. 74 Fed. Reg. at 51,883. This transfer is confirmed in SECY-09-0114: "New Jersey has requested regulatory authority over source material. As a result, the regulatory authority for the Shieldalloy Metallurgical Corporation (SMC) site in Newfield, New Jersey, will transfer to the State on the effective date of the Agreement. SMC is a source material licensee and currently has a decommissioning plan under review by NRC." SECY-09-0114 at 3-4.

B. ARGUMENT

1. Factors to be Considered in Evaluating a Motion for Stay Pending Judicial Review of a Commission Decision

In evaluating a motion for a stay, the Commission will consider four factors:

> (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
>
> (2) Whether the party will be irreparably injured unless a stay is granted;
>
> (3) Whether the granting of a stay would harm other parties; and
>
> (4) Where the public interest lies.

10 C.F.R. § 2.342(e); *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-9, 40 NRC 1, 6 (1994). When ruling on a motion for a stay, irreparable injury to the moving party is the crucial factor. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-17, 52 NRC 79, 83 (2000); *Alabama Power Co.* (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-81-27, 14 NRC 795, 797 (1981). Here the irreparable injury factor compels a stay pending judicial review of the Commission's decision to transfer regulatory authority over the Newfield Facility to New Jersey, and the other factors also militate in favor of issuance of a stay pending judicial review of the Commission's action.

2. Shieldalloy will Sustain Irreparable Injury if Regulatory Authority over the Newfield Facility is Transferred to New Jersey

Shieldalloy has submitted to the Staff a decommissioning plan for the Newfield Facility under which Shieldalloy plans to consolidate all radioactively-contaminated materials present at the Newfield Facility into an isolated, access-restricted area of the site. There, the consolidated materials will be shaped, graded, and covered with a seven-layer engineered barrier that provides a substantial and highly durable resistance to rainwater infiltration that will last for at least 1,000 years, even without any maintenance or repair. *See* Affidavit of Hoy E. Frakes, Jr. ("Frakes Aff."), attached hereto as Exhibit A, at ¶ 3. This decommissioning approach, known as the Long Term Control or "LTC" Alternative, is based on and satisfies the NRC guidance in NUREG-1757, "Consolidated Decommissioning Guidance." Id.

New Jersey has repeatedly announced that, upon acquiring regulatory authority over the Newfield Facility, it will order Shieldalloy to remove the radioactive materials currently present at the site and ship them offsite. Id. at ¶ ¶ 5, 6. In addition, the regulations issued by New Jersey to govern its program for the control of radiation hazards are calculated to preclude, and would in fact preclude, the decommissioning of the Newfield Facility by any means other than the removal of the radioactive materials from the Newfield Facility and their shipment to the Energy*Solutions*, Inc. site in Clive, Utah, the only facility currently licensed to receive them. Id. at ¶ 9. In fact, New Jersey has already rejected Shieldalloy's proposed LTC alternative and directed that Shieldalloy submit a decommissioning plan based on the NJDEP regulations requiring such removal. *See* letter dated October 8, 2009 from Patricia Gardner (NJDEP) to Hoy Frakes (Shieldalloy), Exhibit B hereto.

Shieldalloy will sustain irreparable injury if New Jersey is able to exercise regulatory authority over the Newfield Facility. The cost of implementing the removal option would be

over $70 million, as opposed to the less than $15 million cost to implement the LTC Alternative. Id. Shieldalloy cannot defray a $70 million cost of removal of the materials from the site. Were Shieldalloy required to implement the removal alternative, as New Jersey has announced it intends to require, Shieldalloy would be forced to seek protection under the bankruptcy laws, as it had done once before, and potentially liquidate. Id. at ¶ 10. Thus, this is not a case in which a party would merely incur additional costs if the stay request were denied, *compare Sequoyah Fuels Corp.*, 40 NRC at 6. Here, the very survival of the company is at stake. It is hard to conceive a more substantial, irreparable injury: potential bankruptcy or business failure has been held by the courts to be irreparable injury for stay purposes. *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.,* 559 F.2d 841, 843 (D.C. Cir. 1977); *Goldstein v. Miller,* 488 F. Supp. 156, 175 (D. Md. 1980).

The removal of radioactive materials from the Newfield site, if ordered by New Jersey, would also result in other forms of injury. Were the removal alternative implemented, radiological conditions associated with the processing and packaging the radioactivity currently at the Newfield site for shipment to the disposal site in Utah would result in direct radiation exposure and inhalation of airborne radioactivity by SMC employees, contractors, decommissioning workers, and members of the public. Frakes Aff. at ¶ 11. In addition, members of the public would incur direct exposure during and after the transportation of the residual radioactivity to the Utah disposal site. Id. While the exposures from the removal process would be expected to be within NRC regulatory limits, unnecessary exposure to radiation contravenes the principle of keeping radiation doses to the public resulting from the decommissioning process as low as is reasonably achievable ("ALARA"). See, e.g., 10 C.F.R. § 20.1402. Indeed, the total doses to workers and the public resulting from the removal process

would be larger than those that would result from implementation of the LTC Alternative. Frakes Aff. at ¶ 11.

3. No Harm will be Sustained by Other Parties by the Granting of the Stay

Were the stay to be granted, the Newfield Facility would remain under the regulatory oversight of the NRC. There is no doubt that NRC oversight is adequate to protect public health and safety; indeed, the Commission has found that "[b]ased upon the information provided to us, we have no reason to conclude that there are ongoing violations of NRC health and safety standards at the Newfield site." Memorandum and Order, CLI-09-01, 69 NRC 1, 3 (2009). Therefore, issuance of a stay pending judicial review would not be detrimental to any other parties.

4. The Public Interest Warrants Issuance of Stay

As discussed above, transfer of regulatory authority over the Newfield Facility to New Jersey and the State's announced determination to force the removal the radioactive materials from the site would have adverse consequences affecting not only Shieldalloy but the public at large. The public interest would clearly be served by maintaining the *status quo* until the appropriateness of the transfer of regulatory authority over the Newfield Facility to New Jersey is adjudicated. Since the radioactive materials at the Newfield site have been in their current location and status for decades without adverse radiological or other consequences, a continuation of that status for the limited period of time necessary to seek judicial review will not cause any adverse health or environmental consequences. In addition, the public interest would be served by the opportunity to establish, through judicial review, decommissioning standards for facilities in New Jersey that are compatible with those developed by the NRC for the protection of public health and safety.

5. There is a Strong Likelihood that Shieldalloy will Prevail Before the Courts

The processing of an application for Agreement State status between the Commission and a requesting State is conducted largely between the staffs of the NRC and the State. While comments by the public are solicited (as required by Section 274e(1) of the AEA), there is no opportunity for an interested party to address the potential resolution of its comments by the Staff. As a result, the Commission may take favorable action on an Agreement State application based on faulty advice by the Staff, without the full benefit of the views of outside parties.

The potential risks involved in this procedure are evident in this case. While Shieldalloy provided comments pointing out the inconsistencies between the New Jersey regulatory program and that of the NRC, the resolutions given by the Staff to those comments were erroneous. The discussion that follows summarizes some of the deficiencies in the Staff's disposition of Shieldalloy's comments.

Before the NRC can approve an Agreement State application, the State must have a program for the control of radiation hazards that is "compatible" with the Commission's program for the regulation of the materials over which the State seeks to assume authority. 42 U.S.C. § 2021(d)(2). The State program must also be adequate to protect public health and safety with respect to the categories of materials for which Agreement State status is sought.

The Staff evaluates the State's program as described in the State's application and prepares a written assessment of whether the program is compatible with the NRC regulatory program as defined in an NRC policy statement on State Agreements.[6] For determining compatibility, NRC guidance groups the NRC regulations into "Compatibility Categories."

---

[6] *Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement*, 46 Fed. Reg. 7,540, 7,543 (1981), as amended by 46 Fed. Reg. 36,969 (1981) and 48 Fed. Reg. 33,376 (1983) ("*Criteria Policy Statement*").

Compatibility is determined by comparing the State regulations against the corresponding NRC regulations for compliance with the standards for the applicable Compatibility Category.[7]

The NRC will approve the State's application if it finds the program compatible or contains only minor discrepancies, but not if the State program disrupts a coherent nation-wide program. "If the NRC determines that a State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States, i.e., creates conflicts, gaps, or duplication in regulation, the program would be found not compatible."[8]

The New Jersey Program fails to satisfy the NRC compatibility standards in several important respects. The Staff, however, failed to recognize these failures and erroneously recommended that the Commission approve the Agreement with New Jersey. The discussion below summarizes some of the errors in the Staff's determination that will warrant overturning by a reviewing court.

---

[7] NRC guidance defines Compatibility Categories with the symbols "A," "B," "C," "D," "NRC" or "H&S." The standards for each category are:

A = Basic radiation protection standard or related definitions, signs, labels or terms necessary for a common understanding of radiation protection principles. The State program elements falling in this category should be essentially identical to those of the NRC;

B = Program element with significant direct transboundary implications. The State program elements falling in this category should be essentially identical to those of the NRC;

C = Program element, the essential objectives of which should be adopted by the State to avoid conflicts, duplications or gaps. The manner in which the essential objectives are addressed need not be the same as NRC, provided the essential objectives are met;

D = Not required for purposes of compatibility;

NRC = Not subject to transfer of authority. These are NRC program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the AEA or the NRC regulations;

H&S = Program elements identified by H&S ("health and safety"). These are not required for purposes of compatibility; however, they do have particular health and safety significance. *Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements*, NRC FSME Procedure SA-200 at 6-7.

[8] *Statement of Principles and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs*, 62 Fed. Reg. 46, 517, 46,521 (1997).

a. The New Jersey Program fails to implement the ALARA principle, as required by NRC regulations

NRC Compatibility Criterion 9 states, in relevant part: "Waste Disposal. The standards for the disposal of radioactive materials into the air, water, and sewers, and burial in the soil shall be in accordance with Part 20." The NJDEP Regulations, however, do not implement the "as low as reasonably achievable" ("ALARA") principle set forth in, inter alia, 10 C.F.R. § 20.1402, and do not include adherence to ALARA as one of the radiological criteria for license termination. This is contrary to 10 C.F.R. Part 20 and in violation of Compatibility Criterion 9. In response to a Shieldalloy comment on the draft regulations that pointed out the New Jersey Program's failure to implement the ALARA principle, New Jersey stated that the New Jersey Brownfield statute precludes compliance with ALARA in New Jersey. 40 N.J.R. 5196b at 7, 8 (2008).

Shieldalloy pointed out the New Jersey Program's failure to include ALARA compliance in the comments it submitted to the Staff with regard to the proposed Agreement between the NRC and New Jersey. Shieldalloy Comments on Agreement at 3. The Staff's response to this comment was that New Jersey is allowed to implement regulations that are stricter than the requirements of the license termination rule ("LTR") in 10 C.F.R. Part 20 because the LTR is classified as "compatibility category C". SECY-09-0114, Enclosure 2 at 5. This resolution is erroneous. NRC radiation protection regulations are "basic radiation protection standards." New Jersey's failure to implement the ALARA requirements in 10 C.F.R. Part 20 renders the New Jersey Program incompatible with the NRC's regulatory program.[9] Failure to observe the

[9] In addition, the failure of the New Jersey Program to incorporate the ALARA standard violates an essential element of the NRC radiation protection program, which is the consideration of the detrimental effects of radioactive materials transportation and disposal. Because many of these detrimental effects will occur outside of New Jersey's borders, they have significant environmental and public health impacts outside of New Jersey.

ALARA principle will also result, if the NJDEP Regulations are applied to the Newfield Facility, in higher doses to workers and the public and a lower level of protection of public health and safety than that provided by the NRC regulations. Frakes Aff., ¶ 11.

b. The New Jersey Program is also incompatible with other aspects of the 10 C.F.R. Part 20 regulations

Numerous other differences exist between the NJDEP Regulations and those of the NRC with respect to facility decommissioning. These differences notably include:

- The NRC regulations provide, in 10 C.F.R. §20.1403, for the implementation of license termination under restricted release criteria; the NJDEP Regulations do not allow such termination.
- The NRC regulations in 10 C.F.R. § 20.1401(d) limit dose calculations to 1000 years; the NJDEP Regulations requires decommissioning-related dose calculations to continue beyond 1000 years to the point of "peak dose."

Shieldalloy identified these and other departures from the Part 20 regulatory requirements to the Staff. Shieldalloy Comments on Agreement at 3-5. The Staff, however, rejected the comments on the same impermissible basis as it had ignored New Jersey's failure to incorporate ALARA standards. SECY-09-114, Enclosure 2 at 5. In addition, the Staff sought to justify its acceptance of the New Jersey Program by stating that "[s]ome of NJ's license termination regulations are more stringent than NRC regulatory requirements. Using the above criteria, NRC's assessment of NJ regulations found the State's license termination and decommissioning regulations compatible since they meet the essential objectives of the NRC program elements and provide a level of protection of public health and safety that is at least equivalent to that afforded by NRC's requirements." Id. That "equivalency" does not in fact exist. For example, by not allowing the implementation of the restricted release criteria for license termination,

---

The failure in the New Jersey Program to require that these impacts be considered and minimized violates an essential objective of the NRC regulations, and results in a Compatibility "B" non-compliance.

application of the NJDEP Regulations would require Shieldalloy to remove the radioactive materials from the Newfield Facility, resulting in higher doses to workers and the public and a lower level of protection of public health and safety than that provided by the NRC regulations.

c. The NJDEP Regulations do not allow appropriate exemptions to their provisions

Compatibility Criterion 12 states: "Additional Requirements and Exemptions. Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases . . . to grant necessary exemptions which will not jeopardize health and safety." Contrary to this criterion, the NJDEP Regulations do not provide the ability to grant exemptions to its requirements in the area of facility decommissioning. Shieldalloy identified to the Staff four examples of New Jersey's failure to provide for the possibility of granting necessary exceptions to the regulatory standards that satisfy the ALARA principle and do not jeopardize health and safety:

(1) The NJDEP Regulations will not allow consideration of alternate remediation standards that would increase the allowed incremental dose criterion of 15 mrem/yr (itself significantly lower than the maximum allowable dose of 25 mrem/yr set by the NRC regulations in 10 C.F.R. § 20.1402), even if justified through an ALARA analysis.

(2) The NJDEP Regulations do not allow for any alternative remediation standards if they would result in doses exceeding 100 mrem/yr for an "all controls fail" scenario.

(3) The NJDEP Regulations require that the calculations of doses from radiological decommissioning use only tables of parameters based on specific exposure scenarios.

(4) When modeling the "all controls fail" scenario, the NJDEP Regulations allow no credit for any engineering controls, such as a fence or cover, to be taken when performing the model to determine if the 100 mrem annual dose is exceeded. The NRC, however, allows the licensee to take credit for controls that may degrade but have not completely failed.

Shieldalloy Comments on Agreement at 5-6. In response to Shieldalloy's comments the Staff cited a provision in the NJDEP regulations that allow for exemptions of regulations:

> The State regulation, N.J.A.C. 7:28-2.8, allows the Department, upon application and a showing of hardship or compelling need, with the approval of the NJDEP Commission, to grant an exemption from any requirement of the rules should it determine that such exemption will not result in any exposure to radiation in excess of the limits permitted by N.J.A.C. 7:28-6, "Standards for protection against radiation." This regulation fulfills Criterion 12.

SECY-09-114, Enclosure 2 at 6. However, the Staff ignored New Jersey's position that it is precluded by statute from providing such exceptions: "The Department and the Commission did not include a provision for ALARA in meeting these dose criteria because the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., does not allow such a provision." 40 N.J.R. 5196b at 8. Therefore, the Staff's reference to a regulation whose application to the particular cases cited is precluded by statute is clearly erroneous.

d. The New Jersey Program disrupts ongoing licensed activities

Compatibility Criterion 25 states:

> Existing NRC Licenses and Pending Applications. In effecting the discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect, for an appropriate period of time under State Law, existing NRC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier reexamination or termination of the license.

The NJDEP has stated repeatedly that it opposes Shieldalloy's proposed plan for the decommissioning of the Newfield Facility and that, upon assuming regulatory authority over the Newfield Facility, it will not continue review of the DP that Shieldalloy has submitted to the NRC. Shieldalloy pointed out this state of affairs in its comments to the NRC. Shieldalloy

Comments on Agreement at 9-10. In response, the Staff cited the authority of NJDEP in its BER Procedure 3.08, under which "[u]pon completion of the Agreement, all active NRC licenses issued to facilities in NJ will be recognized as NJDEP licenses. This will ensure a smooth transition in authority from NRC to NJ so that licensees can continue to operate without interference with or interruption of licensed activities. NJ will continue any licensing actions that are in progress at the time of the Agreement and make the final decision on all pending licensing actions." SECY-09-114, Enclosure 2 at 8.

The Staff's resolution of this comment blatantly ignores New Jersey's well publicized intentions with regard to the Newfield Facility and their inevitable consequences. The NRC has now stopped review of the DP proposed by Shieldalloy. As predicted, New Jersey has already rejected the DP, barely a week after the transfer of regulatory authority. *See* Exhibit B hereto. Thus, licensed activities at the Newfield facility are on hold and have been disrupted. The New Jersey Program, as applied to Newfield, does not satisfy Compatibility Criterion 25.

In its comments, Shieldalloy also described the failure of the New Jersey Program to satisfy other Compatibility Criteria. However, the above discussion should suffice to demonstrate that Shieldalloy has a strong likelihood of success on the merits of its petition for judicial review of the NRC decision to enter into its Agreement with New Jersey. Therefore, this factor in the consideration of Shieldalloy's motion for a stay is also satisfied.

CONCLUSION

For the reasons stated above, Shieldalloy's motion should be granted and the Commission should stay the effectiveness of the transfer of its regulatory authority over the Newfield Facility to New Jersey pending judicial review.

CERTIFICATION

As required by 10 C.F.R. § 2.323(b), counsel for Shieldalloy certifies that he has consulted with the other parties in connection with this motion. The Staff has indicated that it "is in no position to consent to a stay of the agreement under which the Commission relinquished, and New Jersey assumed, regulatory authority over Shieldalloy's Newfield site." New Jersey has stated that it also opposes the granting of a stay.

Respectfully submitted,

/Original signed by Matias F. Travieso-Diaz/

Jay E. Silberg
Matias F. Travieso-Diaz
Robert B. Haemer
Ambrea Watts
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, DC 20037-1128
Tel. (202) 663-8000

Counsel for Shieldalloy Metallurgical Corporation

Dated: October 14, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	
	)	
SHIELDALLOY METALLURGICAL	)	Docket No. 40–7102–MLA
CORPORATION	)	ASLBP No. 07–852–01–MLA–BD01
(License Amendment Request for	)	
Decommissioning the Newfield Facility)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Shieldalloy's Amended Motion for Stay Pending Judicial Review of Commission Action Transferring Regulatory Authority Over Newfield, New Jersey Facility to the State of New Jersey" dated October 14, 2009 "Affidavit of Hoy E. Frakes, Jr." and October 8, 2009 letter from Patricia Gardner to Hoy Frakes were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 14th day of October, 2009.

Hon. Gregory B. Jaczko
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Hon. Kristine L. Svinicki
Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Hon. Dale E. Klein
Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Administrative Judge
Alan S. Rosenthal, Chair
Atomic Safety and Licensing Board
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
rsnthl@verizon.net

*Administrative Judge
William Reed
Atomic Safety and Licensing Board
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
whrcville@embarqmail.com

*Administrative Judge
Dr. Richard E. Wardwell
Atomic Safety and Licensing Board
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
richard.wardwell@nrc.gov

*Office of the Secretary
Att'n: Rulemakings and Adjudications Staff
Mail Stop O-16 G4
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
secy@nrc.gov; hearingdocket@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop O-16 G4
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
OCAAmail@nrc.gov

Adjudicatory File
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

*Michael J. Clark, Esq.
*Brett.Klukan, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Michael.Clark@nrc.gov;
Brett.Klukan@nrc.gov

Anne Milgram, Esq.
Attorney General of New Jersey
*Andrew W. Reese, Esq.
*Kenneth Elwell, Esq.
Deputy Attorneys General
New Jersey Office of the Attorney General
Department of Law and Public Safety
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093
reeseand@dol.lps.state.nj.us
kenneth.elwell@dol.lps.state.nj.us

*Johanna Thibault, Law Clerk
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C.
20555-0001
E-mail: johanna.thibault@nrc.gov

*SherVerne R. Cloyd
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
sherverne.cloyd@nrc.gov

/Original signed by Matias F. Travieso-Diaz/

Matias F. Travieso-Diaz

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	
SHIELDALLOY METALLURGICAL CORPORATION (License Amendment Request for Decommissioning the Newfield Facility)	)	Docket No. 40–7102–MLA ASLBP No. 07–852–01–MLA–BD01

AFFIDAVIT OF HOY E. FRAKES, JR.

Guernsey County)
)
State of Ohio)

I, Hoy E. Frakes, Jr., being duly sworn according to law, depose and state the following:

1. I am President of Shieldalloy Metallurgical Corporation ("SMC"), whose principal place of business is in Newfield, New Jersey. I have personal knowledge of the matters asserted herein.

2. SMC is the holder of Source Materials License No. SMB-743 issued by the United States Nuclear Regulatory Commission ("NRC") for a facility in Newfield, New Jersey ("Newfield Facility") owned by SMC. SMC is seeking to decommission the Newfield Facility in accordance with NRC regulations and guidance, and submitted to the NRC on August 28, 2009 a revised decommissioning plan for the facility. Decommissioning Plan for Newfield Facility, Rev. 1b (August 2009) ("DP Rev. 1b").

3. As in previous revisions to its decommissioning plan for the Newfield Facility, SMC proposes in DP Rev. 1b to implement a decommissioning option, known as the Long Term

Control Alternative (LTC Alternative), which is based on and satisfies the NRC guidance in NUREG-1757, "Consolidated Decommissioning Guidance." Under its proposed decommissioning plan, SMC will consolidate all radioactively-contaminated materials present at the Newfield Facility into an isolated, access-restricted 11.7-acre portion of the site, known as the Storage Yard, located on the north eastern boundary of the site. There, the consolidated materials will be shaped, graded, and covered with a seven-layer engineered barrier that provides a substantial and highly durable resistance to rainwater infiltration that will last for at least 1,000 years, even without any maintenance or repair. The LTC Alternative also includes an NRC-supervised, fully funded long term management, maintenance, monitoring and reporting program for the next 1,000 years. The remaining 56 acres of the Newfield Facility will be released for unrestricted use and are expected to be redeveloped for industrial use.

4. The above captioned licensing proceeding was instituted in January 2007 before an NRC Atomic Safety and Licensing Board to rule on the potential approval of SMC's decommissioning plan for the Newfield Facility. 72 Federal Register 4048 (January 29, 2007). That proceeding ("ASLB proceeding") is still pending.

5. The State of New Jersey ("New Jersey"), by itself and through its Department of Environmental Protection ("NJDEP"), has vigorously opposed implementation of the LTC Alternative for the decommissioning of the Newfield Facility. The NJDEP is a party to the ASLB proceeding, and has tendered thirty-three safety, environmental and miscellaneous contentions opposing approval of SMC's decommissioning plan and alleging that "Shieldalloy's proposed decommissioning will not protect public health and safety and the LTC license sought by Shieldalloy will violate the law." NJDEP Petition for Hearing and to Intervene on Shieldalloy's Decommissioning Plan (January 16, 2007) at 189.

6. In addition, top officials of the NJDEP have asserted on a number of occasions, including at a meeting held on December 10, 2008 which I attended, that should New Jersey gain regulatory jurisdiction over the Newfield Facility, it will require that "the slag pile, as currently characterized, ... be removed." Letter dated December 23, 2008 from Nancy Wittenberg, New Jersey Assistant Commissioner of Environmental Protection, to Hoy Frakes (SMC) at 1.

7. On October 16, 2008, the Governor of New Jersey submitted a formal application to the NRC for New Jersey to become an Agreement State pursuant to Section 274b of the Atomic Energy Act, certifying that "the State of New Jersey has an adequate program for the control of radiation hazards covered by this proposed agreement." Letter from Jon S. Corzine to NRC Chairman dated October 16, 2008. Previously, New Jersey had issued for comment, and then promulgated in final form on September 15, 2008 a set of regulations, "Radiation Protection Program Rules" (N.J.A.C. 7:28-1.1 et seq.) intended to support New Jersey's application to become an Agreement State. SMC submitted comments on the proposed regulations on July 17, 2008, identifying a number of deficiencies in New Jersey's Radiation Protection Program ("the New Jersey Program"). New Jersey rejected SMC's comments. 40 N.J.R. 5196(b) (September 15, 2008).

8. On the recommendation of the NRC Staff, the Commission, through Staff Requirements Memorandum "SECY-09-0065, Proposed Agreement between the State of New Jersey and the Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended" (May 18, 2009), agreed to publish a notice of the proposed Agreement between the NRC and New Jersey in the Federal Register, requesting comments from the public. On June 11, 2009 SMC submitted comments asserting that the New Jersey Program is incompatible in a number of respects with the NRC's program for the regulation of radioactive materials.

9. One aspect of the New Jersey Program that is incompatible with the NRC's program for the regulation of radioactive materials is that, in the area of facility decommissioning, the New Jersey Program is aimed specifically and uniquely at the SMC Newfield Facility. This runs directly contrary to NRC Compatibility Criterion 23, which requires that the State implement "practices for assuring the fair and impartial administration of regulatory law." New Jersey has acknowledged that some of its regulations affect only "one facility in the State." 40 N.J.R. 5196(b) at 7. The combined effect of the regulations enacted by New Jersey, if implemented, would be to preclude the possibility that SMC's Newfield site could be decommissioned in situ in accordance with the permissible standards in 10 C.F.R. Part 20 and to require SMC to remove the radioactive materials presently at the Newfield site to a disposal site in Utah.

10. In Tables 17.2 and 17.3 of DP Rev. 1b, SMC estimated the costs of implementing its proposed LTC Alternative and those of removing of the radioactive materials from the Newfield site and shipping them cross-country for disposal. The total cost of implementing the LTC Alternative would be on the order of $14.7 million. By contrast, the total cost of removing the radioactive materials from the site and disposing of them in Utah (the only available site for disposing of the materials) would be in excess of $70 million. SMC is financially able to absorb the cost of implementing the LTC Alternative, but cannot defray a $70 million cost of removal of the materials from the site. Were SMC required to implement the removal alternative, as New Jersey has announced it intends to require, SMC would suffer irreparable injury because it would most likely have to seek protection under the bankruptcy laws and potentially liquidate. SMC was already been bankrupt once and emerged from bankruptcy based, in part, on the agreement

by all parties -- including the NRC and New Jersey -- that funds would be set aside to decommission the Newfield Facility by in situ remediation.

11. In addition, Chapter 7 of DP Rev. 1b assesses that, were the removal alternative implemented, radiological conditions associated with the processing and packaging of the radioactivity currently at the Newfield site for shipment to the disposal site in Utah would result in direct radiation exposure and inhalation of airborne radioactivity by SMC employees, contractors, decommissioning workers, and members of the public. In addition, members of the public would incur direct exposure during the transportation of the residual radioactivity to the Utah disposal site. Such exposure would not take place if the LTC Alternative were implemented. While the exposures from the removal process would be expected to be within NRC regulatory limits, unnecessary exposure to radiation doses contravenes the ALARA principle. Indeed, as discussed in Chapter 7 of the DP, the total doses to workers and the public resulting from the removal process would be larger than those that would result from implementation of the LTC Alternative. Thus, SMC and the public would suffer injury as a result of the health and environmental impacts from the removal alternative.

12. By contrast, the LTC Alternative proposed by SMC is consistent with all applicable regulations. It will result in no measurable radiation doses to any member of the public, and is safer and has fewer health and environmental impacts than any other option for the decommissioning of the Newfield Facility.

Further, the affiant sayeth not.

Hoy E. Frakes, Jr.

Subscribed and sworn to before me
this 09 day of October, 2009.

Sally A. Todt
Notary Public

My commission expires 6/24/2013

SALLY A. TODT
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires June 24, 2013

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Bureau of Enviornmental Radiation
PO Box 415
Trenton, New Jersey 08625-0424
Phone (609) 984-5400
Fax (609) 984-5595

JON S. CORZINE
Governor

MARK N. MAURIELLO
Acting Commissioner

October 8, 2009

Hoy Frakes, President
Shieldalloy Metallurgical Corporation
60790 Southgate Rd.
Cambridge, OH 43725-9414

Dear Mr. Frakes:

As you know, as of September 30, 2009, the State of New Jersey assumed regulatory authority for your source material license (SMB-743) at the Newfield facility. The US Nuclear Regulatory Commission (NRC) has transferred their files to us, including Rev. 1b of your Decommissioning Plan (DP).

Upon review, we have determined that Rev. 1b does not meet the Department's regulations. Therefore, Shieldalloy Metallurgical Corporation (SMC) is required to submit a revised DP, which complies with N.J.A.C. 7:28-58.1 (10 CFR 40 incorporated by reference) and N.J.A.C. 7:28-12.1 *et seq*. which would result in license termination.

Because the NRC accepted the current DP as meeting the timeliness provisions in 10 CFR 40.42, the Department has determined that SMC will remain in compliance if a revised DP is submitted by January 31, 2010. The revised DP shall include, but not be limited to the elements listed in 10 CFR 40.42(g)(4), including a detailed cost estimate and plan for assuring the availability of adequate funds for completion of decommissioning as provided in 10 CFR 40.36.

If you have any questions, please contact Jenny Goodman at (609) 984-5498.

Sincerely,

Patricia Gardner, Manager
Bureau of Environmental Radiation

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

November 26, 2002

Docket No. 04007102 License No. SMB-743
Control No. 132382

David R. Smith
Radiation Safety Officer
Shieldalloy Metallurgical Corporation
P.O. Box 768
Newfield, PA 08344

SUBJECT: SHIELDALLOY METALLURGICAL CORPORATION, ISSUANCE OF LICENSE AMENDMENT, CONTROL NO. 132382

Dear Mr. Smith:

This refers to your license amendment request regarding changes to the Radiation Safety Committee (RSC). Your November 7, 2002 license amendment request proposed changing the Senior Corporate Official and Chair of the RSC from the Senior Vice President and General Manager to the President of Shieldalloy. Enclosed with this letter is Amendment No. 9 to NRC License No. SMB-743. License Condition 9 is modified to include the date of November 7, 2002.

Please review the enclosed document carefully and be sure that you understand and fully implement all the conditions incorporated into the amended license. If there are any errors or questions, please notify the U.S. Nuclear Regulatory Commission, Region I Office, Licensing Assistance Team, (610) 337-5239, so that we can provide appropriate corrections and answers.

An environmental assessment is not required for this action because this action is administrative and procedural in nature and is categorically excluded under 10 CFR 51.22(c)11. This license amendment does not affect the scope and nature of the licensed activity.

As provided by 10 CFR 2.790, a copy of this letter will be placed in the NRC Public Document Room and will be accessible from the NRC Web site at http://www.nrc.gov/reading-rm.html.

Thank you for your cooperation.

Sincerely,

Original signed by Ronald R. Bellamy

Ronald R. Bellamy, Chief
Decommissioning and Laboratory Branch
Division of Nuclear Materials Safety

Enclosure:
Amendment No. 9
cc:
Jill Lipoti, Ph.D., NJDEP

Distribution w/enc.:
K. Kalman, NMSS

DOCUMENT NAME: C:\ORPCheckout\FileNET\ML023310047.wpd
To receive a copy of this document, indicate in the box: "C" = Copy w/o attach/enc. "E" = Copy w/ attach/enc. "N" = No copy

OFFICE	DNMS/RI	E	DNMS/RI	N	DNMS/RI			
NAME	MMiller/MTM1		RBellamy/RRB1					
DATE								

OFFICIAL RECORD COPY

NRC FORM 374 U.S. NUCLEAR REGULATORY COMMISSION PAGE 1 OF 2 PAGES

Amendment No. 9

MATERIALS LICENSE

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 (Public Law 93-438), and Title 10, Code of Federal Regulations, Chapter I, Parts 30, 31, 32, 33, 34, 35, 36, 39, 40, and 70, and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, acquire, possess, and transfer byproduct, source, and special nuclear material designated below; to use such material for the purpose(s) and at the place(s) designated below; to deliver or transfer such material to persons authorized to receive it in accordance with the regulations of the applicable Part(s). This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954, as amended, and is subject to all applicable rules, regulations, and orders of the Nuclear Regulatory Commission now or hereafter in effect and to any conditions specified below.

Licensee	In accordance with the letter dated November 7, 2002
1. Shieldalloy Metallurgical Corporation Aluminum Products & Powders Division	3. License number SMB-743 is amended in its entirety to read as follows:
2. West Boulevard P.O. Box 768 Newfield, NJ 08344-0768	4. Expiration date October 20, 2002 (Extended)
	5. Docket No. 040-07102 Reference No.

6. Byproduct, source, and/or special nuclear material	7. Chemical and/or physical form	8. Maximum amount that licensee may possess at any one time under this license
A. Thorium	A. Any	A. 303,050 kilograms
B. Uranium	B. Any	B. 45,000kilograms

9. Authorized use: Decommissioning activities in accordance with statements, representations and procedures contained in application dated September 15, 1995 and supplements dated November 28, 1995, August 11, September 24, September 26, and November 25, 1997, March 25, 1998, January 28, March 10, March 18, June 1, September 9, September 23, 1999, May 2, May 22, 2000, March 30, and August 27, 2001, August 30, 2002, and November 7, 2002.

CONDITIONS

10. Licensed material may be used only at the licensee's existing facilities at West Boulevard, Newfield, New Jersey.

11. The Radiation Safety Officer for this license is David R. Smith.

12. Nothwithstanding the Derived Air Concentrations (DAC) and Annual Limit on Intake (ALI) listed in Appendix B to 10 CFR Part 20, the licensee may use adjusted DAC values for thorium of 1.9 E-11 microcuries (μCi) per milliliter and for uranium of 8.4 E-11 μCi per milliliter and adjusted ALI values for thorium of 0.047 μCi and for uranium of 0.2 μCi.

MATERIALS LICENSE
SUPPLEMENTARY SHEET

License Number
SMB-743

Docket or Reference Number
040-07102

Amendment No. 9

13. The licensee shall keep records of the working hours of the worker(s) working in the baghouse area performing baghouse activities such as removing or changing bags, or transferring baghouse dust to trucks for transport. The licensee shall perform dose calculations using the records of the working hours of the workers in the various work places. The licensee shall also sum up the total external and internal doses to determine if the workers' total exposure is less than 10% of the dose limits as specified in 10 CFR Part 20.1201(a). If 10% of the dose limit is exceeded or is expected to be exceeded, the licensee shall conduct worker's radiation monitoring as required by 10 CFR Part 20.1502.

14. If the licensee uses respiratory protection equipment to limit intakes pursuant to 10 CFR 20.1702, the licensee shall perform bioassays to evaluate actual intakes at intervals not to exceed twelve months. Whenever an individual will no longer use respiratory protection equipment, the licensee shall perform a bioassay to evaluate the actual intake during the period of respirator use.

15. The licensee is authorized to transport licensed material only in accordance with the provisions of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material."

16. The U.S. Nuclear Regulatory Commission's regulations shall govern unless the statements, representations, and procedures in the licensee's application and correspondence as listed in Condition 10 are more restrictive than the regulations.

For the U.S. Nuclear Regulatory Commission

Date November 26, 2002

By ***Original signed by Marie Miller***

Marie Miller
Decommissioning and Laboratory Branch
Region I
King of Prussia, Pennsylvania 19406

3 of 4 DOCUMENTS

NEW JERSEY REGISTER

VOLUME 40, ISSUE 18

ISSUE DATE: SEPTEMBER 15, 2008

RULE ADOPTIONS

ENVIRONMENTAL PROTECTION
ENVIRONMENTAL REGULATION
DIVISION OF ENVIRONMENTAL SAFETY AND HEALTH
COMMISSION ON RADIATION PROTECTION

40 N.J.R. 5196(b)

Adopted Repeals: N.J.A.C. 7:28-3.5, 3.8, 3.11, 3.13, 4.19, 5.4, 7.5, 8.3, 8.4, 9, 10.4, 10.5, 10.9 and 11

Adopted New Rules: N.J.A.C. 7:28-2.13, 4.16, 12.10, 12.15, and 50 through 64

Adopted Repeals and New Rules: N.J.A.C. 7:28-6

Adopted Amendments: N.J.A.C. 7:28-1.1, 1.4, 1.5, 3.1, 3.2, 3.6, 3.10, 4.1 through 4.18, 5.1 through 5.3, 7.1 through 7.3, 8.1, 8.2, 10.6, 10.8, 12.2 through 12.5, 12.8 through 12.12, 12 Appendix A, 13.1, 13.2, 17.1 through 17.6, 17.8, 18.1, and 48.2

Radiation Protection Programs

Proposed: May 19, 2008 at 40 N.J.R. 2309(a).

Adopted: August 20, 2008 by Lisa P. Jackson, Commissioner, Department of Environmental Protection and August 12, 2008 by the Commission on Radiation Protection, Julie K. Timins, M.D., Chair.

Filed: August 21, 2008 as R.2008 d.281, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1B-1 et seq., 13:1D-1 et seq. and 26:2D-1 et seq.

DEP Docket Number: 04-08-04/637.

Effective Date: September 15, 2008.

Operative Date: Operative upon publication of notice in the New Jersey Register by the Department of Environmental Protection that the U.S. Nuclear Regulatory Commission and the State of New Jersey have entered into an Agreement for the State to regulate source, certain special nuclear, and by-product material.

Expiration Date: June 21, 2010.

The Department of Environmental Protection (Department) and the Commission on Radiation Protection (Commission) are adopting new rules, repeals and amendments to the Radiation Protection Programs' rules, N.J.A.C. 7:28, which new rules, repeals and amendments are part of New Jersey's becoming an Agreement State with the U.S. Nuclear Regulatory Commission (NRC).

New Jersey has a comprehensive radiation protection program encompassing x-ray machines, naturally occurring or accelerator produced radioactive materials (NARM), radon, clean up of radioactively contaminated sites, monitoring around nuclear power plants, emergency preparedness and response to radiological incidents including transportation accidents, and requirements for non-ionizing sources of radiation. Additionally, there are requirements for licensure and certification of people - radiological technologists, nuclear medicine technologists, radon testers and mitigators, and qualified medical physicists.

States have the option to assume responsibility for regulation of radioactive materials that are governed under the Atomic Energy Act (AEA) through an agreement between the Governor of the state and the United States Nuclear Regulatory Commission (NRC). (See 42 U.S.C. §2021.) This is known as becoming an "Agreement State." The AEA requires that an Agreement State's regulations be compatible with the NRC's regulations, and that the state's regulations be adequate to protect the public health and safety, with respect to such materials. (See 42 U.S.C. §2021(d).)

Prior to the 2005 Energy Policy Act (42 U.S.C. §§13201 et seq.), the definition of byproduct material included any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material. This type of byproduct material includes nuclear medicine produced by a reactor (instead of an accelerator). In August 2005, President Bush signed the Energy Policy Act (42 U.S.C. §§13201 et seq.)). By changing the definition of byproduct material to include discrete sources of NARM, the Energy Policy Act gives the NRC control over every aspect of almost all radioactive materials beginning in August 2009, unless a state enters into an Agreement with the NRC. In other words, the existing New Jersey program, except for a limited amount of material, will be Federally preempted, unless New Jersey becomes an Agreement State. In light of this approaching deadline, and mindful of the State's history and experience in regulating radioactive materials, the State notified the NRC of its decision to become an Agreement State by letter dated May 23, 2006, from Governor Corzine to NRC Chairman Nils J. Diaz.

New Jersey is seeking approval from the NRC to regulate source, certain special nuclear, and byproduct material. If the NRC grants New Jersey Agreement State status, New Jersey will have authority to regulate these materials instead of the NRC. The within rules establish New Jersey's regulation of source, certain special nuclear (states can only assume authority to regulate small quantities of special nuclear material), and byproduct material, in order that New Jersey can become an Agreement State.

When the NRC grants New Jersey Agreement State status, which is anticipated to be in late summer 2009, the Department will publish a notice in the New Jersey Register, advising that the within amendments, repeals and new rules are operative. Until the new rules, repeals and amendments are operative, New Jersey must continue to rely on the Federal government to license and regulate source, special nuclear, and byproduct materials.

Summary of Public Comments and Agency Responses:

The following individuals, companies, organizations, and/or agencies submitted written comments on the proposal.

1. Laurence Bernson - Alcatel-Lucent
2. J. Russell Cerchiaro - Schering-Plough
3. Michael J. Drzyzga - Hoffmann-La Roche, Inc.
4. Sue M. Dupre - Princeton University Environmental Health and Safety
5. Michael Egenton - New Jersey State Chamber of Commerce
6. Hoy E. Frakes, Jr. - Shieldalloy Metallurgical Corporation
7. Halim A. Hasan - Lundbeck Research USA, Inc.
8. Debra Hrabinski
9. Tony Russo - Chemistry Council of New Jersey
10. Vincent Williams - Merck Research Laboratories

General

1. COMMENT: The comment period should be extended 60 days because the length and complexity of the proposal and the time of year has made it difficult to complete a review of the proposal and develop appropriate comments. (1, 2, 3, 4, 5, 7, 8, 9, 10)

RESPONSE: Although the proposal was lengthy, the substance of the proposal was straightforward. As stated in the Summary, 40 N.J.R. 2309(a) at 2310, New Jersey rules must be compatible with the Nuclear Regulatory Commission (NRC) regulations; accordingly, the Department and the Commission elected to incorporate the NRC's regulations by reference. NRC licensees in New Jersey had the opportunity to review and comment on NRC regulations when they were proposed. If a facility is in compliance with NRC regulations, the facility should have no difficulty complying with the New Jersey rules. The difference is that the regulator will be the Department instead of the NRC.

As was discussed in the Summary, 40 N.J.R. 2310, if New Jersey does not become an Agreement State by August 2009, the NRC could assume authority over all NARM, which is currently regulated by New Jersey. The State can continue to regulate NARM under a waiver that expires on August 8, 2009.

It was not practical for the Department and the Commission to extend the comment period, in light of the NRC's schedule for reviewing New Jersey's application to become an Agreement State. Appendix C from the NRC's Office of Federal and State Materials and Environmental Management (FSME) Programs State Agreement procedure on Processing an Agreement (SA-700), includes a schedule for processing a new Agreement (http://nrc-stp.ornl.gov/procedures/sa700hb_appc.pdf). The amount of time projected by the NRC to process an Agreement once the NRC receives a formal Agreement application is 39 weeks (between nine and 10 months), provided the application requires little or no revision, the Commission reviews and votes on the two required NRC staff papers in a timely manner (the NRC staff submit a paper to the Nuclear Regulatory Commission members on the proposed Agreement and another paper on the final Agreement), and the state has the required number of employees hired and trained. If the Agreement is to be in place by August 2009, New Jersey should submit its application no later than September 2008, which gives the NRC 11 months to review and approve the application. Part of a complete application is adopted rules. If the comment period had been extended, the rules would likely not be in place to submit a complete application with sufficient time before August 2009 for the NRC to complete its process.

2. COMMENT: Many current NRC licensees in New Jersey are not currently licensed by the Department, and do not have access to the existing Department regulations. An outdated and incomplete version of N.J.A.C. 7:28 is available "on-line." The rules must be purchased as part of the entire Department code at a cost of over $ 500.00. In order for the proposed new rules to be effectively evaluated by those New Jersey based NRC licensees, they must obtain the current N.J.A.C. 7:28. This purchase process significantly delays the review, and therefore supports extending the comment period. (3, 7, 8)

RESPONSE: The Department's regulations webpage explains that the posted statutes and regulations are "courtesy copies" of the documents. The link on the rules page for how to get copies of the Department's rules states that the official current version of the code must be purchased from LexisNexis. However, another link from the rules page takes one to New Jersey Office of Administrative Law, www.nj.gov/oal/rules.html, where there is a link to LexisNexis, which provides free on-line public access to the New Jersey Administrative Code and the New Jersey Register, www.lexisnexis.com/njoal. As an alternative, the New Jersey Register and the New Jersey Administrative Code are available for review at public and university libraries throughout the State.

The majority of the amendments to the rules incorporate the NRC regulations by reference. The NRC regulations are available on the NRC website, http://www.nrc.gov/reading-rm/doc-collections/cfr/, through the Federal Government Printing Office website at http://www.gpoaccess.gov/CFR/INDEX.HTML, and at public and university libraries throughout the State.

3. COMMENT: There were an insufficient number of stakeholder meetings about the proposed rules. (3, 10)

RESPONSE: As part of the rulemaking, there were six public stakeholder meetings. Department representatives gave presentations about the rules at the meeting of the New Jersey Chapter of the Health Physics Society, Somerset, December 5, 2006; and the meeting of the Commission on Radiation Protection, Ewing, March 21, 2007. The Department met with the Medical Physicists and other industry groups at the Radiation Protection office, Ewing, on July 17, 2007; and made a presentation to the Mid-Atlantic States and New Jersey Health Physics Society in Lambertville, October 16, 2007; and a presentation to the New Jersey Society of Nuclear Medical Technologists in Atlantic City on March 7, 2008. On December 6, 2007, the Department met with radiological remediation consultants to discuss Decommissioning Regulations.

In addition, the Department posted a link to Agreement State issues on its website, which included a list of Frequently Asked Questions. The Department and the Commission believe that they provided ample opportunities for stakeholders to meet with the Department and the Commission, to learn about the proposed rules and to discuss the rules with Department representatives.

Domestic Treatment Works Discharge Limits

4. COMMENT: There is an inconsistency between the Summary and the rule text at N.J.A.C. 7:28-6 regarding release limits for H-3 and C-14. The Summary at 40 N.J.R. 2317 states that a limit of one curie would apply to both H-3 and C-14, but the rule incorporates the NRC regulation by reference. The NRC discharge limits are five curies per year for H-3 and one curie per year for C-14. (3, 4, 8, 10)

RESPONSE: The Summary is not correct when it states that the limit will be one curie for H-3 and C-14. The rule text is correct, in which 10 CFR 20.1301 is incorporated by reference, replacing the term "sanitary sewer" with "domestic treatment works." There is no change from the current NRC discharge limits, which are five curies per year for H-3 and one curie per year for C-14.

Throughout the Summary, the Department and Commission indicated that the intention is to be adequate and compatible with the Federal rules, as is required if New Jersey is to be an Agreement State. A limit of one curie per year for H-3 would not be compatible with the Federal rules. Consequently, the rule text governs.

Personnel Monitoring

5. COMMENT: Proposed Subchapter 7 no longer contains any reference to personnel monitoring and, therefore, cross references from different subchapters are no longer valid. (4)

RESPONSE: In Subchapter 7, personnel monitoring is mentioned only in N.J.A.C. 7:28-7.4, Use of personnel monitoring equipment. The Department and Commission neither proposed nor adopted amendments to N.J.A.C. 7:28-7.4. (Although the Summary, 40 N.J.R. 2319, does refer to amendments to N.J.A.C. 7:28-7.4 to remove references to radioactive materials or licensees, no such amendment was necessary or proposed.)

The section remains in the rules and cross references to it are valid.

Decommissioning

6. COMMENT: The rules should contain a definition of real property, since the term is used in the decommissioning subchapter (N.J.A.C. 7:28-12). (4)

RESPONSE: The Department and Commission believe that the term "real property," as it is customarily used, is clear. The term includes land and things permanently attached to the land, such as buildings, and stationary mobile homes. Anything that is not real property would be materials and equipment, for purposes of Subchapter 12, Remediation Standards for Radioactive Material, where the term "real property" is used. The rules' dose criterion at N.J.A.C. 7:28-12.8 applies to the land and buildings. The contribution from residual radioactivity from buildings and land together must not exceed 15 millirem per year.

7. COMMENT: Subchapter 12 is not clear with regard to release levels for building surfaces and materials and equipment. The NRC does not include such levels in its rules; however, the NRC refers to Regulatory Guidance documents to support a licensee's "free release" of buildings and equipment. The rule should be clarified or supplemented by cross referencing the NRC guidance upon adoption. (3)

RESPONSE: As stated in the Response to Comment 6, the Department and Commission's dose criterion of 15 mrem per year at N.J.A.C. 7:28-12.8 applies to land and buildings. The NRC guidance documents related to "free release" of materials and equipment are not part of the Federal rules, and are not incorporated into these rules; however, because the adopted rules incorporate the NRC's rules by reference, the NRC's guidance is useful for interpretation. Therefore, the Commission and the Department will use the NRC's current approach for "free release" of materials and equipment outlined in NRC Regulatory Guide (NUREG) 1757, Vol.1, Rev. 2, Consolidated Decommissioning Guidance, which is to review specific cases on an individual basis.

NUREG 1757 provides a description of the current NRC approach to releasing solid materials, which is on a case by case basis. For materials and equipment with surface contamination, the NRC uses either the criteria in Regulatory

Guide 1.86, "Termination of Operating Licenses for Nuclear Reactors," or the criteria in Fuel Cycle Policy and Guidance Directive FC 83-23, entitled "Guidelines for Decontamination for Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Byproduct, Source or Special Nuclear Materials Licenses." Both guidance documents can be found on the NRC website (www.nrc.gov).

The release of materials and equipment with volumetric contamination is implemented by the NRC under the provisions of the December 27, 2002, NRC Memorandum, "Update on Case-Specific Licensing Decisions on Controlled Release of Concrete from Licensed Facilities" (referenced in U.S. Nuclear Regulatory Commission, All-Agreement States Letter No. STP-03-003, "Update on Case- Specific Licensing Decisions on Controlled Release of Concrete from Licensed Facilities," January 15, 2003.). This memorandum indicates that controlled releases of volumetrically contaminated concrete may be approved under an annual dose criterion of a "few mrem." NUREG 1757 goes on to state that a few mrem means zero to five mrem per year total effective dose equivalent (TEDE).

8. COMMENT: The Department and Commission propose to delete text referencing acceptable testing procedures for water and soil at N.J.A.C. 7:28-12.5(c) and (d), and replace it with certification by the Department's Office of Quality Assurance. This could be interpreted to mean that the only acceptable testing methods would be laboratory analysis. Would surveys by hand held instruments still be allowed for determining building surface contamination? (3)

RESPONSE: In 1999, when the Department and the Commission proposed amendments to Subchapter 12, the Department's Office of Quality Assurance did not certify laboratories for radionuclides in soil analyses. Therefore, the Department was compelled to propose and adopt N.J.A.C. 7:28-12.5(c) and (d), which contain requirements on acceptable procedures and intercomparison testing. (See (31 N.J.R. 1723(a) at 1730, 32 N.J.R. 2866(a) at 2884.) Since then, the Office of Quality Assurance has updated its laboratory certification process to include certification of radiological analyses in soil, which make the specific language in the previous rules at N.J.A.C. 7:28-12.5(c) and (d) unnecessary.

The Department's existing regulation at N.J.A.C. 7:28-12.5(e) addresses surveys, requiring surveying with hand held instruments to be done in accordance with the Department's Field Sampling Procedures Manual. The Department and Commission did not propose amendments to N.J.A.C. 7:28-12.5(e), other than to recodify it as (d). Thus, surveys by hand instruments continue to be allowed.

9. COMMENT: The method for calculating compliance with radiological decommissioning criteria in the proposed rule is overly restrictive. Nationwide, radiation control programs have found it appropriate for efficient and timely radiological decommissioning to provide flexibility in the analysis approach to address the wide variation in the regulated facilities. Specifically, analyzing dose from radiological decommissioning sites for more than 1,000 years into the future, as required at proposed N.J.A.C. 7:28-12.10(d) and 12.11(f)2iii, is meaningless, and the Department misinterpreted the NRC's response to comment document regarding calculations beyond 1,000 years being valuable for long-lived radioactive material. The NRC has stated that modeling should be specific to each radionuclide as:

> Unlike analyses of situations where *large quantities* of long-lived radioactive material may be involved (e.g. *a high-level waste repository*) and where distant future calculations may provide some insight into consequences, in the analysis for decommissioning. . .long term modeling thousands of years into the future of doses that are near background may be virtually meaningless. (Emphasis added by commenter.)

52 Fed. Reg. 39058, 39083 (July 21, 1997) (Response F.7.3)

If the peak dose occurs in less than 1,000 years, there is no rational basis to analyze for a thousand-year period. (6)

RESPONSE: The existing regulation at N.J.A.C. 7:28-12.10(f)2iii requires dose calculations to be extended for 1,000 years. Thus, the requirement that dose calculations be measured for 1,000 years is not new. The Department and the Commission proposed new N.J.A.C. 7:28-12.10(d) and amended N.J.A.C. 7:28-12.11(f)2iii to require dose calculations to be extended to the time of peak dose or 1,000 years, whichever is longer.

The NRC decommissioning regulation at 10 CFR 20.1401(d) requires that when calculating the total effective dose equivalent to the average member of the critical group, the licensee shall determine the peak annual total effective does equivalent (TEDE) expected within the first 1,000 years after decommissioning. The commenter's interpretation of the NRC's response to a comment on making the time period correlate with the half-life of the specific nuclide is different than the Department and the Commission's interpretation. A clear point that the NRC made is that the 1,000-year modeling requirement does not apply to long-lived nuclides. Specifically, the NRC responded:

> As previously discussed in the preamble to the proposed rule, the [Nuclear Regulatory] Commission believes use of 1000 years in its calculation of maximum dose is reasonable based on the nature of the levels of radioactivity at decommissioned sites and the potential for changes in the physical characteristics at the site over long periods of time. Unlike analyses of situations where large quantities of long-lived radioactive material may be involved (e.g., a high-level waste repository) and where distant future calculations may provide some insight into consequences, in the analysis for decommissioning, where the consequences of exposure to residual radioactivity at levels near background are small and *peak doses for radionuclides of interest in decommissioning occur within 1000 years*, long term modeling thousands of years into the future of doses that are near background may be virtually meaningless.

52 Fed. Reg. 39058, 39083 (July 21, 1997) (Response F.7.3) (emphasis added).

Long-lived radionuclides, such as uranium and thorium, have half-lives in the millions and billions of years and peak doses may well occur after 1,000 years. The Department and Commission believe it is vital to consider the peak dose, whenever it occurs, to ensure that adequate measures are taken to protect the public health and safety. Moreover, in its review of the proposed Agreement State rules, the NRC did not object to the proposed language requiring modeling to the time of peak dose beyond 1,000 years, and agreed that this language met the compatibility requirements for becoming an Agreement State.

With regard to the mandate in N.J.A.C. 7:28-12.10(d) and 12.11(f)2iii that modeling be to the time of peak dose or 1,000 years, whichever is longer, one will not know when peak dose occurs unless it can be demonstrated that the dose decreases over time. For these reasons, the Department and the Commission do not agree that N.J.A.C. 7:28-12.10(d) or 12.11(f)2iii should be modified or deleted on adoption.

10. COMMENT: The Department and the Commission's requirement at N.J.A.C. 7:28-12.8(c) and 12.11(a)4 for decommissioned sites to meet the surface water quality standards would prohibit surface water discharges because of the "anti-backsliding" provisions in the surface water rules. Specifically, the surface water quality standard at N.J.A.C. 7:9B-1.5(d) would preclude detectable radioactivity releases above background, even if the levels are significantly below those required to protect the health and safety of the public, because provisions of the Surface Water Quality Standards do not allow measurable changes in water quality. Exceptions to the backsliding provisions apply only if some change in ambient water quality should be allowed because of necessary and justifiable social or economic development, and that a decommissioned facility may not be able to demonstrate that.

The proposed rules do not consider that the NRC rules allow radioactive discharges to surface waters, provided that all pathways for exposure are considered and resulting doses are within limits and that they are minimized to the extent reasonable considering a balance of costs and benefits. The Department and the Commission have proposed a ban on any radioactive discharges to surface waters from remediation sites and this is an impractical standard for radioactivity that is not related to a rational public health and safety goal.

The proposal does not explain the equivalence between its proposed impractical ban on discharges with the NRC approach of minimizing discharges consistent with a balance of cost and benefits. Application of the Surface Water Quality Standards to radioactivity should be deleted from the rules. The proposed provision has a discriminatory impact on the one facility that would be affected by this provision. (6)

RESPONSE: The intent of N.J.A.C. 7:28-12.8(c) and 12.11(a)4 is to ensure that decommissioned facilities with residual material present do not affect the quality of any surface water near the facility. The Department and the Commission's intent in referencing the surface water quality rules was to ensure that the surface water standards for radioactivity at N.J.A.C. 7:9B-1.14(c)6 are met in order to verify that health and safety of humans and the environment are sufficiently protected.

The Department's provisions on backsliding and antidegradation in N.J.A.C. 7:9B apply to permitted discharges, not potential runoff from decommissioned sites. Accordingly, they would apply to a decommissioned facility only if it seeks a new or expanded wastewater discharge permit.

To ensure that licensees do not have to search through the Surface Water Quality Standards rules (N.J.A.C. 7:9B) to find the rule relating to radioactivity, the Department and the Commission are modifying N.J.A.C. 7:28-12.8(c) on adoption to replace the reference to the entire surface water chapter to the specific provision that contains the standards for radioactivity. The Department is making a similar modification at N.J.A.C. 7:28-12.11(a)4.

As explained above, there is not an impractical ban on surface water discharges; rather, the licensee must ensure that runoff to surface water from a decommissioned site is not over the surface water quality standards for radioactivity. The NRC's approach of minimizing discharges consistent with a balance of cost and benefits is termed ALARA. As explained in the Response to Comment 13 below, the Brownfield and Contaminated Site Remediation Act does not allow this approach.

The fact that there may be only one facility in the State now affected by the rule does not mean that other facilities will not be affected in the future. In fact, each facility at which there is a potential for radioactive materials to migrate to a stream could be affected. Creating an open class is not the equivalent of special legislation, which is prohibited, nor is it arbitrary or discriminatory.

11. COMMENT: The rules should allow calculation of dose based on realistic scenarios. Proposed N.J.A.C. 7:28-12.11(b) requires the use of default clean up criteria whose bases are specific exposure scenarios. Licensees may request consideration of alternate parameters for site-specific characteristics, but not for site-specific exposure scenarios. NRC guidance allows the use of realistic site-specific scenarios with justification for the reasons stated in their License Termination Rule Analysis, and Consolidated Decommissioning Guidance, NUREG 1757, Vol. 2, Ch. 5. Reevaluate the approach to exposure scenario selection, in light of the more recent NRC guidance. (6)

RESPONSE: The Department and the Commission do allow the use of some, but not all, alternate site-specific exposure scenarios. For example, adopted N.J.A.C. 7:28-12.11(c)4 (formerly N.J.A.C. 7:28-12.10(c)4) allows the Department to consider alternate indoor and outdoor occupancy times, if they are justified by land uses other than residential or commercial.

In proposing the adopted rules, the Department and the Commission considered the updated NRC guidance, but the basis for Tables 6 and 7 at N.J.A.C. 7:28-12.11(b) (which tables were not amended in the adopted rules) was provided when the rules were proposed at 31 N.J.R. 1723(a), and the parameters in the tables remain justified.

> An explanation on how these values were derived is provided in the Department's publication Development of Generic Standards for Remediation of Radioactively Contaminated Soils in New Jersey. This document may be obtained by contacting the Bureau of Environmental Radiation at (609) 984-5400 or from the Radiation Protection Program's web site at http://www.state.nj.us/dep/rpp/index.htm. The allowed minimum soil radionuclide concentrations are different for each radionuclide because of their differing properties. For example, the radionuclide thorium-232 is a strong gamma emitter; therefore, the external exposure pathway is the major contributor to dose, whereas uranium-238 contributes the most dose via the groundwater pathway. (31 N.J.R. 1723(a))

The Department and the Commission established sufficiently conservative bounds on the exposure scenarios in Tables 6 and 7 of adopted N.J.A.C. 7:28-12.11(b) to ensure that the dose criteria would be met for the length of time the residual radionuclides would be present (thousands to billions of years).

12. COMMENT: Dose calculations based on realistic degradation of engineering controls over time should be allowed. The NRC approach reflects that engineered structures degrade by known physical processes. N.J.A.C. 7:28-12.11(e) assumes that engineered structures instantaneously fail at the precise moment when institutional controls are presumed to end. The proposed rule does not and can not provide a reasoned basis for assuming engineered structures simply vanish, rather than degrading through processes consistent with the known physical world. (6)

RESPONSE: The Department and the Commission amended N.J.A.C. 7:28-12.11(e) only to make it applicable to licensees, as well as petitioners. Consequently, it remains in all other respects the same as previous N.J.A.C. 7:28-12.10(e), including the provision regarding institutional and engineering controls.

The adopted rules do not assume that the engineered barriers fail instantaneously. Rather, the rules require the Department to consider the public health consequences in the event that the engineered barriers completely fail at some point in the future. This is a reasonable approach to ensure an adequate degree of protection to the public health and safety. The NRC approach of assuming that engineered structures degrade over time does not take into account intentional human intervention.

In the Department's experience, human intervention greatly increases radiation exposure at radiologically contaminated sites. At some sites, signs indicating that radioactive materials are present are missing, fences have holes cut into them, and there is evidence (including the presence of a mattress and warm coffee cup) of persons residing on sites that

are restricted due to the presence of radioactive materials. This human-caused degradation of engineering controls occurred after only 10 years.

Whenever engineering controls fail, under adopted N.J.A.C. 7:28-12.11(e) the licensee would have to show that the all control fails dose criterion (100 mrem/y) is met. This level is over six times the unrestricted dose criterion of 15 mrem per year.

13. COMMENT: The Department and the Commission should allow use of NRC remediation dose criteria when appropriate and when justified based on the As Low As Reasonably Achievable (ALARA) principle. Proposed N.J.A.C. 7:28-12.11(e) would not allow consideration of alternate remediation standards if they would result in increasing in any manner the allowed incremental dose criterion of 15 mrem per year, and would not allow consideration of remediation standards if they would be supported by increasing in any manner the allowed 100 mrem per year all controls fail dose criterion.

The proposal contains no justification for requiring stricter remediation standards than those provided by the NRC, nor for not allowing licensees to apply the Federal standards in appropriate cases. The proposed rule would prohibit returning land to productive use when allowed by Federal regulations. (6)

RESPONSE: Neither the remediation criterion of 15 mrem per year at N.J.A.C. 7:28-12.8(a)1 nor the all controls fail dose criterion of 100 mrem per year is new, nor is either amended in the adopted rules. These dose criteria have been in the rules since August 2000 (31 N.J.R. 1723(a), 32 N.J.R. 2866(a)). At the time they proposed the criteria, the Department and the Commission justified the 15 mrem per year incremental dose limit in a publication entitled, Development of Generic Standards for Remediation of Radioactively Contaminated Soils in New Jersey, which was made available to the public on the Department's website, and by hard copy if requested. The 100 mrem per year all controls fail dose criterion was justified in the Summary to the proposed Soil Remediation Standards for Radioactive Materials (31 N.J.R. 1724-1725).

The fact that these dose criteria do not have an explicit associated ALARA requirement is also not new. ALARA determinations allow the use of cost as a factor for determining what level of remediation is cost effective below the standards. The Department and the Commission did not include a provision for ALARA in meeting these dose criteria because the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., does not allow such a provision.

As explained in the Response to Comment 9 above, there is flexibility in complying with the remediation standards, including the availability of a petition for alternative remediation standards, N.J.A.C. 7:28-12.11.

14. COMMENT: The Department and the Commission improperly designated source material as "diffuse NARM" without a rational basis. Proposed amended Subchapter 4 is intended to cover only material that is not currently regulated by the NRC; however proposed N.J.A.C. 7:28-4.1(b) is ambiguous. The NRC defines as source material naturally occurring uranium or thorium above certain threshold criteria (10 CFR 40.1). The Summary of Subchapter 4, 40 N.J.R. 2312, provides as an example of diffuse NARM, "concentrated naturally occurring radioactive material in a waste pile for a mineral extraction facility." This creates an ambiguity between what is and what is not NRC-licensed materials.

The proposed deletion of the exception for source, special nuclear and byproduct material at N.J.A.C. 7:4.1(b), could be used to regulate source material as diffuse NARM. (6)

RESPONSE: The Department and the Commission can understand the confusion this may have caused for source material licensees. There are several facilities in the State that in the past extracted minerals either from native sand or imported material, concentrated naturally occurring radioactive materials (NORM) in the process and are now left with waste piles with technologically enhanced NORM (TENORM). This TENORM does not meet the definition of source material (the uranium and thorium are below 0.05 percent by weight), but the concentration of uranium and/or thorium is above the exemption for licensing NARM. Any facility that possesses uranium or thorium or any combination thereof above 0.05 percent by weight will be regulated as source material through N.J.A.C. 7:28-60 (which is 10 CFR Part 40 incorporated by reference).

Since replacing the deleted text will not affect the original intent of the proposal, and will avoid confusion for licensees that possess source material and TENORM, the Department and the Commission are modifying the rule on adoption to reinsert the exception for source, special nuclear, and byproduct material at N.J.A.C. 7:28-4.1(b).

Broad Scope Licensing

15. COMMENT: Proposed N.J.A.C. 7:28-54 incorporates by reference the Federal rules at 10 CFR Part 33, which include a provision that licensees cannot add or cause the addition of byproduct material to any food, beverage, cosmetic, drug or other product designed for ingestion or inhalation, or application to, a human being (10 CFR 33.17(a)(4)). Currently, pharmaceutical companies that discover new molecular entities and develop them into medicine will in some way formulate a radio-labeled version of the drug which is then transferred to a NRC Medical Use licensee (10 CFR Part 35 or equivalent Agreement State licensee) for clinical testing in humans. Therefore, all pharmaceutical companies that engage in this practice have a condition in their broad scope license that excludes them from the limitation of 10 CFR 33.17(a)(4). How will the Department and the Commission address this issue, with a similar license condition or new regulations? (3, 10)

RESPONSE: The Department and the Commission are incorporating the Federal regulations at 10 CFR Part 33 by reference. There is no proposed change to the Federal requirement at 10 CFR 33.17(a)(4). Accordingly, unless a licensee has an exemption, the prohibition in the Federal rules will apply.

N.J.A.C. 7:28-2.8, Special exemptions, allows the Department, with the approval of the Commission, to grant an exemption from any requirement of the rules, provided the conditions of N.J.A.C. 7:28-2.8 are met. The pharmaceutical companies may apply for an exemption from N.J.A.C. 7:28-54.1 (and the prohibition of the Federal rules) through N.J.A.C. 7:28-2.8.

Fees

16. COMMENT: The basis for calculating certain fees is inconsistent with the governing New Jersey statute. N.J.S.A. 26.2D-9(l) requires that fees shall be annual or periodic, shall be based on criteria contained in the fee schedule, and shall reflect the actual or projected expense incurred by the Department in the performance of the service. Proposed N.J.A.C. 7:28-64.10, where the fees are adjusted annually based on the consumer price index, does not comply with the requirements of N.J.S.A. 26.2D-9(l). (6)

RESPONSE: The adopted fees are based directly on the Department's cost to provide the services for which the fees are charged. Subsequent adjustment by the Consumer Price Index, as the rules allow, is a reasonable projection of the anticipated increase in the Department's costs. In the event that the inflation adjusted fees do not keep pace with the Department's actual costs, the Department can propose amended fees in accordance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

17. COMMENT: The term "full cost" is used in Tables 2 of N.J.A.C. 7:28-64.2, Schedule of fees. No definition of full cost was provided in the proposal and it is unclear whether this fee will be annual or periodic. (6)

RESPONSE: As stated in the Summary at 40 N.J.R. 2359, and as provided in N.J.A.C. 7:28-64.4(d), the Department incorporates by reference the fee provisions of 10 CFR Parts 170 and 171 for the purpose of calculating fees. Since the NRC charges full cost for decommissioning, the Department also charges full cost, which is consistent with the Legislative mandate in N.J.S.A. 26D-9(l). Full cost means that the Department will assign unique job numbers to a licensee and staff will code their timesheets appropriately. The Department will then bill the licensee semi-annually for the actual cost the Department incurs (based on the salary of the specific staff members that coded time, fringe and indirect costs, and support services, such as laboratory costs).

18. COMMENT: The Department proposes to charge fees for non-routine inspections (at full cost) and license amendments, but the NRC incorporates the cost of these activities in its annual fee. It will be difficult for the regulated community to budget for unforeseen events. Including the costs of these items in the annual fee would reduce paperwork for the Department and the licensee. (3, 4, 7, 8)

RESPONSE: To ensure that the Department collects sufficient funds to administer and implement the Agreement State program, the Department investigated the fee structures of other Agreement States. The majority of the Agreement States charge full cost for non-routine inspections and a graduated cost for license amendments.

Under the adopted rules, there is no separate fee for license amendment requests that involve little staff time to complete, such as facility name changes, and removal of authorized users. These are routine tasks, and are requested by numerous licensees; accordingly, payment of the annual fee is sufficient at this time to cover the cost of these services.

The rules do contain specific fees for amendments that require significant staff time to complete. These include a request to add isotopes, change procedures, add authorized users, add a process, or relocate a facility, or a request that

requires a site visit. By charging separate fees for non-routine tasks, the Department is ensuring that the cost is passed on to only those licensees that use the service and not shared among all licensees.

19. COMMENT: Reconsider charging a fee to universities and non-profit institutions. The NRC does not currently charge a fee. (8)

RESPONSE: As stated in the Summary, 40 N.J.R. 2363, the Federal government reimburses the NRC for the costs associated with providing services to university and non-profit institutions. This reimbursement is provided for in the Omnibus Budget Reconciliation Act of 1990, as amended.

Unlike the NRC, the Department does not have a mechanism to receive fee relief for those activities for which is does not charge fees or charges reduced fees. The Department is required to recover in fees 100 percent of the cost of services it provides. If the Department were to eliminate or further reduce the fee to universities and non-profits from payment of fees, the Department would have to spread the cost among the remaining licensees, who would incur higher fees as a result.

A fee for non-profit educational institutions is not new. The previous rules at N.J.A.C. 7:28-4.19 did not exempt non-profit educational institutions from fees.

20. COMMENT: There should not be a fee to non-profit educational institutions and private medical practices for non-contiguous additional use sites. Facilities with additional use sites within four miles of each other are now administered under a single Department license. Some universities have various sites across New Jersey, but all operate under the same NRC license. (4, 8)

RESPONSE: As stated in the Summary, 40 N.J.R. 2363, the Department considered the added costs to non-profit educational institutions and proposed relief by charging a reduced fee, or no fee, for certain additional use sites. Some colleges and universities have many buildings that are not adjacent or contiguous; that is, a campus may have buildings where radioactive materials are used that are more than five miles from the main facility that holds the radioactive materials license. In such cases, instead of charging the full fee, the adopted rules provide for a reduced fee of the 25 percent of the usual annual fee. In the case of the facility with an additional use site within less than five miles of the main facility, no additional use fee will be charged because there will be minimal additional cost to the Department to license and inspect such closely located facilities.

In the case of a university with sites across the State, the additional use fee would be charged, and is appropriate, because the Department incurs additional expense by traveling throughout the State to perform inspections.

A comparison to the NRC license is not appropriate, since the NRC does not charge a fee to non-profit educational institutions.

Summary of Agency-Initiated Changes:

N.J.A.C. 7:28-1.1(b) is modified on adoption to reinstate the language of the previous rule, making the chapter applicable to "all persons," as well as those licensed or registered by the Department. The rule is also modified on adoption to apply to those licensed or registered to install, handle, transport and store the equipment and materials identified in the rule. These activities were also included in the previous rule.

The Radiation Protection Act at N.J.S.A. 26:2D-10 requires "all sources of radiation" to be "shielded, transported, handled, used and kept in such a manner as to prevent all users thereof and all persons within effective range thereof from being exposed to unnecessary radiation." Accordingly, it was not appropriate, as proposed, to limit the scope of the rules to only those licensed or registered individuals. Rather, the rules must cover all persons, in order that they cover "all sources," as required under the statute. To limit the rules to only those licensed or registered by the State would not satisfy the requirements of the Radiation Protection Act.

Similarly, the rules as proposed would not have applied to all of those activities that the Radiation Protection Act addresses. Unlike the previous rules, which were sufficiently comprehensive to address the requirements of the statute, the proposed rules would not have applied to the transportation, storage, handling, or shielding of sources of radiation, contrary to the statute. As modified on adoption, the rule meets the statutory requirement.

N.J.A.C. 7:28-6.1(d)6 is modified on adoption to delete redundant text.

N.J.A.C. 7:28-12.12(c)1ii is modified on adoption to clarify that there is determined to be substantial public interest in public outreach events related to restricted release license termination of contaminated sites if the Department receives a petition containing the signatures of 25 or more people. The proposal stated that the petition must contain the signatures of 25 people.

N.J.A.C. 7:28-17.4(k) is modified on adoption by replacement of the reference to a license with reference to a registration. This subchapter will regulate machine source radiography. Machine sources of radiation are registered with the State, not issued licenses.

N.J.A.C. 7:28-53.1(c) is modified on adoption to correct a cross reference.

N.J.A.C. 7:28-58.1(c)3 is modified on adoption to correct the punctuation. The beginning quotation marks are missing from the word "No," which will replace the wording to be deleted from the incorporated 10 CFR 40.6.

N.J.A.C. 7:28-61.1(c)10 is modified on adoption to delete duplicative words.

N.J.A.C. 7:28-64.2, Table 1, Fee Category 7.C is modified on adoption to correct the punctuation by adding a period to the end of the sentence that concludes ". . . when authorized on the same license." The proposal had omitted the period.

N.J.A.C. 7:28-64.8 is modified on adoption by replacement of the phrase "[a]n application for" with the phrase "[a] letter requesting." The proposed text refers to applications for license amendments. There are no such applications. Requests for an amendment to a license will be in the form of a letter to the Department.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis.

The Department and the Commission are adopting new rules, repeals and amendments in order that the State's rules are compatible with the NRC regulations, so that New Jersey can become an Agreement State. Except as discussed below, the adopted new rules and amendments do not exceed Federal standards.

The NRC regulations at 10 CFR 20.1401(d) require modeling to 1,000 years; whereas, the adopted amendment at N.J.A.C. 7:28-12.10(d) requires modeling to the time of peak dose. The adopted amendment appears to be more stringent than the NRC regulations at 10 CFR 20.1401(d). However, in the NRC's response to comment on their proposed decommissioning regulations, 62 Fed. Reg. at 39083 (Response F.7.3), the NRC explains that the 1,000-year provision is intended to apply only to short-lived nuclides. Short-lived nuclides are defined as having half-lives between 5.3 and 30 years and which would decay to unrestricted dose levels in about 10 to 60 years. (62 Fed. Reg. at 39069.) For long-lived nuclides, future calculations beyond 1,000 years would be valuable. (62 Fed. Reg. at 39083.) Thus, the intent of 10 CFR 20.1401(d) is to require additional longer dose assessments, depending on the duration of the nuclides. Therefore, based on the regulatory intent of 10 CFR 20.1401(d), the adopted amendment to increase the time period of interest is not more stringent than the Federal regulation at 10 CFR 20.1401(d). The short-lived nuclides to which the 1,000 years was intended to apply would have decayed to unrestricted levels by 1,000 years. Accordingly, the proposed rule is not more stringent than the Federal rule, and no further analysis is required.

Although the NRC rules do not require compliance with specific water quality standards, the adopted amendments to N.J.A.C. 7:28-12.8, which include adherence to the Surface Water Quality standards for radioactivity, can be compared to the NRC's requirement of an all pathways dose criterion. The "all pathways" requirement, as applied to surface water, means that surface water contamination that results in human exposure must be assessed as part of the 25 mrem/year dose criterion. Surface water that is contaminated with radiation could result in contaminated fish, contamination of irrigation water used for crops, and human exposure to radiation through recreational bathing. The Department does not require consideration of these pathways in dose assessments to demonstrate compliance with the Department's dose decommissioning criterion. By requiring adherence to the Surface Water Quality Standards, the Department and the Commission are both taking into account the potential dose that could result from contamination of surface water, resulting in no significant difference between the two approaches. Therefore, the adopted rule is consistent with the Federal rule and no further analysis is required.

Adopted Subchapter 55, Medical Use of Radioactive Materials, incorporates by reference the Federal rules at 10 CFR Part 35; however, the Department and the Commission are requiring licensees to use a dose calibrator before administering radiopharmaceuticals. NRC currently requires the use of this instrument for only certain administrations to humans. Dose calibrators provide a check on the prescribed dose, as well as the prescribed radionuclide of radiopharmaceuticals. The Department and the Commission considered an actual example of a misadministration of a dose of radiopharmaceuticals to demonstrate that the benefits of using a dose calibrator outweigh the costs.

The cost of a new dose calibrator is about $ 7,000. The cost of personnel time to use the calibrator is estimated to be about 40 hours per year, at a pay rate of about $ 33.00/hour (2006 pay rate obtained from the New Jersey Nuclear Medicine Technologist Board). The cost of personnel time to ensure that the calibrator is properly calibrated (a linearity check) may require a consultant, and is estimated to take about five hours per year at a pay rate of $ 50.00 per hour, for a total cost of $ 8,570.

The benefit from using a dose calibrator is the avoidance of administering an improper dose. The Department and Commission are aware of a reported incident in which four mCi of Thallium-201 were administered to a patient, instead of the prescribed dose of Tc-99m pertechnate. The administration resulted in a whole body dose of 5.2 rem, which could have been avoided had a dose calibrator been used. The NRC uses $ 2,000 per person-rem in its ALARA analyses. (Appendix N of NUREG-1757, Consolidated Decommissioning Guidance, Vol. 2, Rev.2.) Thus, the cost of the improperly administered dose was $ 2,000 times 5.2 rem, or $ 10,400. Even if only one misadministration happens per year, the benefit of the averted dose ($ 10,400) outweighs the cost of buying and using a new dose calibrator ($ 8,570).

In practice, the costs associated with this analysis are overestimated. The majority of medical facilities already possess dose calibrators and use them.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. GENERAL PROVISIONS

7:28-1.1 Purpose and scope

(a) (No change.)

(b) This chapter applies to ***all persons and*** persons licensed or registered by the Department to receive, possess, use, transfer, ***install, handle, transport, store,*** or dispose of ionizing radiation producing machines, non-ionizing radiation producing sources, diffuse technologically enhanced naturally occurring radioactive materials, diffuse accelerator-produced radioactive materials, by-product, source, or certain special nuclear material or to operate a production or utilization facility under N.J.A.C. 7:28-51 through 60. The limits in this chapter do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released under N.J.A.C. 7:28-55.1, or to exposure from voluntary participation in medical research programs.

(c) The rules in this chapter establish standards for protection against ionizing radiation resulting from activities conducted under registrations or licenses issued by the Department.

(d) It is the purpose of the rules in this chapter to control the receipt, possession, use, transfer, and disposal of licensed material, ionizing radiation producing machines, or non-ionizing radiation producing sources by any licensee or registrant in such a manner that the total dose or exposure to an individual (including doses resulting from licensed and unlicensed radioactive material and from radiation sources other than background radiation) does not exceed the standards for protection against radiation prescribed in the rules in this chapter. However, nothing in this chapter shall be construed as limiting actions that may be necessary to protect health and safety.

7:28-1.4 Definitions

(a) The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional words and terms applicable to the chapter, incorporated from 10 CFR 20, are

located at N.J.A.C. 7:28-6. Additional words and terms applicable to a specific subchapter only, will be found in that subchapter.

1. General Terms:

. . .

"Annually" means occurring once per year at intervals of not less than 51 consecutive weeks nor more than 53 consecutive weeks.

. . .

"Semi-annually" means occurring twice per year at intervals of not less than 25 consecutive weeks nor more than 27 consecutive weeks.

. . .

2. Ionizing radiation terms:

. . .

"Diffuse" means a radionuclide that has become concentrated, but not for the purpose of use in commercial, medical, or research activities.

"Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Domestic treatment works" or "DTW" means all publicly owned treatment works as well as any other treatment works processing primarily domestic sewage and pollutants together with any ground water, surface water, storm water or process wastewater that may be present.

. . .

"Radioactive materials registrant" means a person who is required to register radioactive byproduct material, source material or special nuclear material with the Department pursuant to this chapter.

"Radiographer" means any individual who is in attendance at a site where ionizing radiation-producing machines are being used and who uses or supervises their use in industrial radiographic operations and who is responsible to the owner for assuring compliance with the requirements of this chapter.

"Radiographer's assistant" means any individual who, under the personal supervision of a radiographer, uses ionizing radiation-producing machines, related handling tools, or survey instruments in industrial radiography.

"Radiography" means the examination of humans or animals, or of the structure of materials by non-destructive methods, utilizing ionizing radiation-producing machines. This term is not intended to apply to techniques such as electron microscopy or x-ray diffraction.

"Registrant" means a person who is required to register an ionizing radiation-producing machine source of radiation with the Department pursuant to this chapter.

. . .

"Sewage sludge" means the solid, semi-solid, or liquid residue generated by the processes of a domestic treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and any material derived from sewage sludge.

. . .

[(c)] ***3.*** (No change in text.)

7:28-1.5 Communications

(a) Communications concerning this chapter, or matters relating to radiation protection, may be addressed to the New Jersey Department of Environmental Protection, Radiation Protection and Release Prevention Element, PO Box 415, Trenton, New Jersey 08625-0415, Telephone: (609) 984-5636, Fax: (609) 633-2210. The physical location of the office is 25 Arctic Parkway, Ewing, New Jersey 08638. Applications and forms may be obtained from the website at http://www.state.nj.us/dep/rpp/index.htm.

(b) All emergency notification of incidents involving sources of radiation in this State shall be immediately reported to either one of the following agencies:

1. Radiation Protection and Release Prevention Element
New Jersey Department of Environmental Protection
25 Arctic Parkway
Ewing, NJ 08638
Telephone: (609) 984-5462
Hours: 8:00 A.M. to 5:00 P.M. daily, except Saturday, Sunday, and Holidays

After hours and weekends toll free: 1 (877) 927-6337 (1 (877) WARN-DEP)

2. (No change.)

SUBCHAPTER 2. USE OF SOURCES OF IONIZING RADIATION AND SPECIAL EXEMPTIONS

7:28-2.8 Special exemptions

The Department, upon application and a showing of hardship or compelling need, with the approval of the Commission, may grant an exemption from any requirement of these rules should it determine that such exemption will not result in any exposure to radiation in excess of the limits permitted by N.J.A.C. 7:28-6, Standards for Protection Against Radiation.

7:28-2.13 Violations

(a) The Department may obtain an injunction or other court order to prevent a violation of the provisions of:

1. The Act; or

2. A regulation or order issued pursuant to the Act.

(b) The Department may impose a civil penalty for a violation of:

1. Any provision of this chapter or order issued hereunder;

2. Any term, condition, or limitation of a license issued under this chapter; or

3. A revocation under N.J.A.C. 7:28-4.17, 51 through 60, or 63.

SUBCHAPTER 3. REGISTRATION OF IONIZING RADIATION-PRODUCING MACHINES

7:28-3.1 Registration for possession of ionizing radiation-producing machines

(a) Any person, manufacturer, dealer or State, county or local government shall register with the Department every ionizing radiation-producing machine possessed within the State of New Jersey except as exempted by N.J.A.C. 7:28-3.2.

(b) Any person, manufacturer, dealer or State, county or local government shall apply for such registration within 30 days after taking possession, custody or control of ionizing radiation-producing machines on forms available from the Department.

(c) (No change.)

7:28-3.2 Exemptions from registration for possession of ionizing radiation-producing machines

(a)-(c) (No change.)

7:28-3.5 (Reserved)

7:28-3.6 Transfer of registration for ionizing radiation-producing machines

Registrations for ionizing radiation-producing machines are not transferable.

7:28-3.8 (Reserved)

7:28-3.10 Denial of an application for registration, and suspension, modification, or revocation of registration of ionizing radiation-producing machines

(a) The Department, in addition to any penalties authorized by the Act, may deny an application for registration or suspend, modify or revoke a registration of ionizing radiation-producing machines by reason of amendments to the Act, adoption of rules, orders issued by the Department pursuant to said Act or if the applicant or registrant:

1.-7. (No change.)

(b) (No change.)

(c) The Department may terminate a registration upon request submitted by the registrant to the Department in writing.

7:28-3.11 (Reserved)

SUBCHAPTER 4. LICENSING OF DIFFUSE NATURALLY OCCURRING OR DIFFUSE ACCELERATOR PRODUCED RADIOACTIVE MATERIALS

7:28-4.1 Scope and general provisions

(a) This subchapter shall apply to persons who manufacture, produce, transfer, distribute or arrange for the distribution, sell, lease, receive, acquire, own, possess or use any diffuse naturally occurring or diffuse accelerator produced radioactive materials, including TENORM, in this State.

(b) No person shall manufacture, produce, transfer, distribute or arrange for the distribution, sell, lease, receive, acquire, own, possess or use any diffuse naturally occurring or diffuse accelerator produced radioactive materials, including TENORM, in this State unless authorized by a specific license issued by the Department as provided by N.J.A.C. 7:28-4.7 and 4.8, a general license as provided in N.J.A.C. 7:28-4.5, or an exemption as provided in N.J.A.C. 7:28-4.3.
Excepted from this provision are by-product, source and special nuclear materials.

(c) A person who sells, transfers, distributes or arranges for the distribution of a device containing diffuse naturally occurring or diffuse accelerator produced radioactive materials manufactured by another person, but which is sold, transferred or distributed under its own name, shall obtain a license in accordance with this subchapter.

7:28-4.2 Recognition of licenses for diffuse NARM from other jurisdictions

(a) Any person who possesses a specific license or equivalent licensing document issued by a Federal agency or any other state is granted a general license in this State provided that the provisions of (b)1 through 4 below have been met.

(b) Any person who possesses a specific license or equivalent licensing document issued by a Federal agency or any other state may, pursuant to the general license in (a) above, transport, receive, possess, or use the radioactive materials specified in such license within this State for a period not in excess of 180 days in any period of 12 consecutive months without obtaining a specific license from the Department provided that:

1. (No change.)

2. The licensee notifies the Department in writing at least three days prior to the time that such radioactive material is brought into this State. Such notification shall indicate the location, period, and type of proposed possession and use within this State, and shall be accompanied by a copy of the pertinent licensing document. If in a specific case the three-day period would impose an undue hardship on the user, he may, upon application to the Department, obtain permission to proceed sooner;

3.-4. (No change.)

(c) (No change in text.)

7:28-4.3 Exemption from requirement for a license for manufacture, production, transfer, distribution or arrangement of distribution, sale, lease, receipt, acquisition, ownership, possession or use of all diffuse naturally occurring or diffuse accelerator produced radioactive materials

(a) A person shall be exempt from the requirement to obtain a license for the following activities:

1.-2. (No change.)

3. The person manufactures, produces, receives, possesses, uses, transfers, distributes or arranges for the distribution, sells, leases, owns or acquires products or materials containing diffuse naturally occurring or diffuse accelerator produced radioactive materials in concentrations not in excess of those exempted in (b) below;

Recodify existing 5.-7. as 4.-6. (No change in text.)

7. The person owns a domestic treatment works where sewage sludge is present which may contain TENORM from the separation of liquids and solids which is the outcome of normal operations of the domestic treatment works;

8. (No change in text.)

9. The person owns property where residual contamination remaining at the site was remediated under the Radiation Protection Act (N.J.S.A. 26:2D-1 et seq.) and/or the other authorities listed in the Soil Remediation Standards at N.J.A.C. 7:28-12.2(a). Such residual concentrations may be greater than the limits specified in (a)5 above, but be under restricted conditions imposed by the Department (such as engineering and institutional controls), and meet the dose criteria specified in N.J.A.C. 7:28-12.8.

(b) The following concentrations of diffuse naturally occurring radioactive materials, including TENORM, and diffuse accelerator-produced radioactive materials, when obtained from naturally occurring materials or when produced by an accelerator are exempt from the requirements for a license:

	Exempt Concentrations	
	Column 1	Column 2

	Exempt Concentrations	
	Gas concentration	Liq & solid Concentration
Element (nuclide)	(uCi/ml)	(uCi/ml)***
...		

* The values for those diffuse naturally occurring radioactive materials and diffuse accelerator produced radioactive materials, including TENORM, that are followed by a single asterisk(*) are based upon multiplying 20 times the most restrictive release concentrations specified in 10 CFR 20 Appendix B, Table 2, Columns 1 (air) and 2 (water).

** These concentrations do not apply to source material for thorium and uranium.

*** uCi/g for solids

1.-2. (No change.)

(c) If a person manufactures, produces, transfers, distributes or arranges for the distribution, sells, leases, receives, acquires, owns, possesses or uses diffuse naturally occurring radioactive materials or diffuse accelerator produced radioactive materials, including TENORM, in quantities less than those listed in N.J.A.C. 7:28-4.5(c), they are exempt from the requirement for a license.

7:28-4.4 Types of licenses for manufacture, production, transfer, distribution or arrangement for distribution, sale, lease, receipt, acquisition, ownership, possession or use of all diffuse naturally occurring or diffuse accelerator produced radioactive materials

(a) General licenses described in N.J.A.C. 7:28-4.5 are effective without the filing of an application with the Department or the issuance of licensing documents to particular persons.

(b) Specific licenses are issued to named persons upon application filed pursuant to the requirements of this subchapter.

7:28-4.5 General licenses for the transfer, distribution or arrangement for distribution, sale, lease, receipt, acquisition, ownership, possession or use of diffuse naturally occurring or diffuse accelerator produced radioactive materials and certain devices and equipment

(a) Any person who uses, transfers, distributes or arranges for the distribution, sells, leases, receives, acquires, owns or possesses the following devices and equipment incorporating diffuse naturally occurring or diffuse accelerator produced radioactive material, when manufactured, tested and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the Department, or a specific license of a Federal agency or any other state, shall be deemed to have a general license:

1.-3. (No change.)

(b) The devices described in (a) above shall not be transferred, abandoned or disposed of except by transfer to a person duly authorized to receive such device by a specific license issued by the Department, a Federal agency, or any other state.

(c) The following quantities of radioactive substances, when obtained from diffuse naturally occurring materials or diffuse accelerator produced radioactive materials, are generally licensed provided that no person shall at any one time possess or use more than a total of 10 such quantities:

Radioactive Material	Column A Not as a Sealed Source (microcuries)	Column B As a Sealed Source (microcuries)
---	---	---

. . .

(d)-(e) (No change.)

(f) Persons who transfer, distribute or arrange for the distribution, sell, lease, receive, acquire, own, possess or use items and quantities of radioactive materials set forth in (a) and (c) above pursuant to a general license shall not:

1.-4. (No change.)

(g) Persons who receive, acquire, possess or use a device pursuant to a general license specified in (a) above:

1.-2. (No change.)

3. Shall have the device tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at intervals not to exceed six months;

4.-6. (No change.)

7. Shall be exempt from the requirements of this subchapter, except the provisions of N.J.A.C. 7:28-4.4(a), 4.9, 4.14, 4.19, records of surveys, records of radioactive materials, and reports of theft, loss, or incidents pursuant to the requirements in N.J.A.C. 7:28-6, Standards for Protection Against Radiation.

7:28-4.6 Application for and renewal of specific licenses for manufacture, transfer, distribution or arrangement for distribution, sale, lease, receipt, acquisition, ownership, possession or use of diffuse naturally occurring or diffuse accelerator produced radioactive materials

(a) Upon approval of an initial or renewal application, a specific license may be issued by the Department for a period of 10 years commencing on the date the license is issued.

(b) Application for specific licenses and renewals shall be filed with the Department, on forms available from the Department.

(c) All applications shall contain the following signature and certification:

1. (No change.)

2. The certification shall be signed by the highest ranking corporate, partnership, or governmental officer or official at the facility or the individual for which or for whom the specific license is requested.

(d) An application for a specific license may include a request for a license authorizing one or more activities.

(e) Information included in the specific license application will be incorporated in and made a part of the terms and conditions of such license by reference.

(f) All applicants for initial and renewal applications for specific licenses shall complete the application in its entirety with no reference to previously filed documents. The Department may accept photocopies of previous relevant applications.

(g) No initial or renewal specific licenses shall be issued unless the appropriate annual license fee required by N.J.A.C. 7:28-64.4 is paid.

(h) Except as provided in N.J.A.C. 7:28-4.19, applications and documents submitted to the Department will be made available for public inspection.

(i) Upon the request of the Department at any time after the filing of the original or renewal specific license application, and before the expiration of the license, the applicant shall submit further information to enable the Department to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(j) All applications for a license or amendment shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(k) The Department may deny an application for a specific license if the applicant:

1.-3. (No change.)

7:28-4.7 General requirements for approval of an application for an initial specific license or renewal of a specific license for use of diffuse naturally occurring or diffuse accelerator produced materials

(a) If the Department determines that an applicant meets the requirements of this subchapter and the Act, it may issue an initial specific license or renew a specific license for non-human use of radioactive materials provided:

1.-3. (No change.)

7:28-4.8 Special requirements for approval of an application for an initial specific license or renewal of a specific license for use of diffuse naturally occurring or diffuse accelerator produced radioactive materials

(a) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific license or renewal of a specific license may be issued for use of multiple quantities or types of radioactive material provided:

1. The applicant satisfies the general requirements for approval of specific license applications in N.J.A.C. 7:28-4.7;

2.-4. (No change.)

(b) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific license or renewal of a specific license may be issued for use of multiple quantities or types of radioactive material in processing for distribution to other authorized persons provided:

1. The applicant satisfies the general requirements for approval of specific license application in N.J.A.C. 7:28-4.7;

2.-3. (No change.)

(c) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific license or renewal of a specific license may be issued to distribute certain devices to persons generally licensed under N.J.A.C. 7:28-4.5(a) and (e) provided:

1. The applicant satisfies the general requirements for approval of specific license applications in N.J.A.C. 7:28-4.7;

2. The applicant submits sufficient information relating to the design, manufacturer prototype testing, quality control procedures, labeling, proposed uses and potential hazards of the device to provide reasonable assurance that:

i. (No change.)

ii. No person possessing, using, transporting or exposed to the device will receive a radiation dose to a major portion of his body in excess of 0.1 rem in any one year under ordinary circumstances of use;

iii.-iv. (No change.)

3. (No change.)

(d) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific license or renewal of a specific license will be issued to transfer, possess, or control products or materials containing exempt concentrations of radioactive material specified in N.J.A.C. 7:28-4.3(b) which the transferor has introduced into the product or material provided:

1. The applicant satisfies the general requirements for approval of specific license applications in N.J.A.C. 7:28-4.7;

2.-3. (No change.)

4. Within 30 days subsequent to the end of the reporting period, each specific licensee shall file an annual report with the Department describing kinds and quantities of products transferred, the concentration of radioactive material contained and the quantity of radioactive material transferred during the reporting period which shall be the 12-month period ending June 30 of each calendar year.

7:28-4.9 Terms and conditions of general and specific licenses

(a) Each license issued pursuant to this subchapter shall be subject to all the provisions of the Act, now or hereafter in effect, and to this chapter and orders of the Department.

(b) No license to possess or utilize radioactive material pursuant to this subchapter shall be transferred or assigned.

(c) Each person licensed by the Department pursuant to this subchapter shall confine his or her possession and use of radioactive material to the locations and purposes authorized by such license, and shall not use or permit the use of radioactive materials contrary to the applicable requirements of this chapter. Persons licensed under the provisions of this subchapter may transfer radioactive material within the State only to the persons licensed to receive such material or as otherwise authorized by the Department in writing.

(d) The Department may incorporate in any license at the time of issuance, or thereafter, all such additional requirements and conditions with respect to the licensee's manufacture, distribution or arrangement for the distribution, sale, lease, receipt, possession, use, ownership or transfer of radioactive material as it deems appropriate or necessary in order to assure compliance with this chapter and the Act.

(e) Each licensee authorized under N.J.A.C. 7:28-4.8(c) to distribute certain devices to generally licensed persons shall:

1. (No change.)

2. Furnish to each general licensee to whom such device is transferred a copy of N.J.A.C. 7:28-4.5(a), (e) and (g), 8.3 and 8.5, records of surveys and records of radioactive materials pursuant to the requirements in N.J.A.C. 7:28-6, Standards for Protection Against Radiation.

7:28-4.10 Expiration of specific license

Except as provided in N.J.A.C. 7:28-4.11, each specific license shall expire at 12:01 A.M. of the day, in the month and year stated in the license.

7:28-4.11 Status of specific licenses pending renewal

In any case in which a specific licensee has filed a complete application in proper form for renewal of a specific license not less than 30 days prior to expiration of the existing specific license, such specific license and all its existing conditions shall not expire until the Department has acted upon the application.

7:28-4.12 Amendment of a specific license at request of licensee

(a) Applications for amendment of a specific license shall be filed in accordance with N.J.A.C. 7:28-4.6 and shall specify the amendment desired and the grounds for such amendment.

(b) The Department will evaluate only amendment applications submitted by personnel authorized by the licensee.

(c) The applicant for an amended specific license shall not engage in the activities for which an amendment has been requested until approval has been granted by the Department.

7:28-4.13 Records

All persons licensed pursuant to this subchapter shall keep records in accordance with N.J.A.C. 7:28-6, Standards for Protection Against Radiation.

7:28-4.14 Inspections

(a) All licensees shall allow the Department or its agents to inspect radioactive material and the facilities and premises where radioactive material is used or stored.

(b) (No change.)

(c) Upon request by the Department, or its agents, licensees shall make available for inspection by the Department records kept pursuant to this chapter.

7:28-4.15 Tests

(a) At the request of the Department or its agents, each licensee shall perform, or allow the Department to perform if the Department so desires, such tests as the Department deems appropriate or necessary for the administration of this subchapter, including tests of the following:

1.-4. (No change.)

7:28-4.16 Financial assurance and recordkeeping for decommissioning

(a) Except as set forth in (b) below, this section incorporates by reference 10 CFR 30.35 Financial assurance and recordkeeping for decommissioning, and the Appendices as referenced in 10 CFR 30.35.

(b) The following provisions of 10 CFR 30.35 are incorporated by reference with the specified changes:

1. "Unsealed byproduct material" and "byproduct material" shall mean "diffuse NARM";

2. "Commission," "Nuclear Regulatory Commission," "U.S. Nuclear Regulatory Commission," and "NRC," shall mean "Department of Environmental Protection";

3. 10 CFR 30.35(g), replace "Each person licensed under this part or parts 32 through 36 and 39" with "Each person licensed under this subchapter";

4. 10 CFR 30.35(g), replace "§30.34(b)," with " N.J.A.C. 7:28-4.9"; and

5. 10 CFR 30.35(g)(3)(iv), replace "10 CFR part 20, subpart E," with "N.J.A.C. 7:28-12".

7:28-4.17 Modification, revocation, suspension, and termination of general and specific licenses

(a) Each general license shall be subject to modification, suspension or revocation by reason of amendments to the Act, adoption of rules by the Commission or the Department, orders issued by the Department pursuant to authority of the Act, or for violation or failure to observe any of the terms and provisions of the Act, license or any rule of the Commission or the Department, or order of the Department.

(b) Each specific license shall be subject to modification, suspension or revocation by reason of:

1.-3. (No change.)

4. Conditions revealed by the application for a specific license or statement of fact or any report, records or inspection or other means which would warrant the Department to refuse to grant a specific license on an original application;

5. Violation of or failure to observe any of the terms and provisions of the Act or the license, or any rule of the Department or order of the Department;

6. Falsification or misleading statements in any license application;

7. Alteration of licensing document;

8. (No change.)

9. Failure to make timely payment of licensing fees.

(c) If a specific license is not to be renewed or if a licensee requests a termination of its license, the licensee shall furnish to the Department, prior to the expiration date of the license, close-out surveys, wipe tests and/or soil samples demonstrating that the facility meets the requirements of N.J.A.C. 7:28-12. The facility shall also provide a disposition certificate attesting to the disposal of radioactive material.

7:28-4.18 Requests for an adjudicatory hearing

(a) When the Department denies an initial application for or renewal of a specific license, or determines to modify, revoke, suspend or terminate a general or specific license, the Department shall send a notice of decision to the applicant or licensee by certified mail return receipt requested. The notice shall advise the applicant or licensee of the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The notice shall include the following information:

1.-3. (No change.)

4. The requirements for requesting a stay under N.J.A.C. 7:28-4.19.

(b)-(d) (No change.)

7:28-4.19 (No change in text.)

SUBCHAPTER 5. CONTROLLED AREAS FOR REGISTRANTS

7:28-5.1 Areas that registrants must control

Every area in which there is any reasonable possibility of an occupant receiving an exposure dose from radiation more than the dose specified in N.J.A.C. 7:28-6 for radiation levels outside a controlled area shall be set apart as a controlled area by any person having possession, custody or control of any ionizing radiation-producing machine.

7:28-5.2 Limitations on controlled areas for registrants

No area within controlled areas shall be used for residential quarters although a room or rooms in residential buildings may be set apart as a controlled area.

7:28-5.3 Precautionary procedures

(a) Any person having possession, custody or control of any ionizing radiation-producing machine shall comply with the following precautionary procedures:

1. Area surveys shall be performed in controlled areas and in adjacent areas to insure that exposure levels to individuals conform to N.J.A.C. 7:28-6. The surveys shall be performed in accordance with N.J.A.C. 7:28-7, Radiation Surveys and Personnel Monitoring for Registrants.

Recodify existing 4.-7. as 2.-5. (No change in text.)

SUBCHAPTER 6. STANDARDS FOR PROTECTION AGAINST RADIATION

7:28-6.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 20, Standards for Protection Against Radiation.

(b) The Department does not regulate nuclear reactors, special nuclear materials in quantities sufficient to form a critical mass, high-level waste disposal facilities, or byproduct material defined in Section 11e(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. §2014). Insofar as the incorporated rules refer to those facilities and/or materials previously referenced, those references are not incorporated, nor do any cross references include those facilities and/or materials.

(c) The following provisions of 10 CFR Part 20 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 20.1001, Purpose;

2. 10 CFR 20.1002, Scope;

3. 10 CFR 20.1003, Definitions, the following definitions are not incorporated by reference: "act," "Commission," "Department," and "sanitary sewerage system";

4. 10 CFR 20.1007, Communications;

5. 10 CFR 20.1009, Implementation collection requirements: OMB approval;

6. 10 CFR 20.1401, General provisions and scope;

7. 10 CFR 20.1402, Radiological criteria for unrestricted use;

8. 10 CFR 20.1403, Criteria for license termination under restricted conditions;

9. 10 CFR 20.1404, Alternate criteria for license termination;

10. 10 CFR 20.1405, Public notification and public participation;

11. 10 CFR 20.2301, Application for exemptions;

12. 10 CFR 20.2401, Violations; and

13. 10 CFR 20.2402, Criminal penalties.

(d) The following provisions of 10 CFR Part 20 are incorporated by reference with the specified changes:

1. "Nuclear Regulatory Commission," "NRC," "Commission," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 20 of the Code of Federal Regulations that are incorporated by reference, mean the New Jersey Department of Environmental Protection, except when specifically noted in this subchapter;

2. 10 CFR 20.1003, in the definition of "ALARA," replace "licensed activity" with "licensed or registered activity," and "and licensed materials" with ", licensed materials, and registered ionizing radiation producing machine sources";

3. 10 CFR 20.1003, in the definition of "background radiation," in the first sentence replace "or special nuclear material)" with "special nuclear material, or technologically enhanced naturally occurring radioactive material)," and replace in the last sentence "or special nuclear materials regulated by the Commission" with ", or special nuclear materials regulated by the State or the NRC, or diffuse NARM regulated by the State";

4. 10 CFR 20.1003, in the definition of "controlled area," replace "licensee" with "licensee or registrant";

5. 10 CFR 20.1003, in the definition of "declared pregnant woman," replace "licensee" with "licensee or registrant";

6. 10 CFR 20.1003, in the definition of "license," replace "parts 30 through 36, 39, 40, 50, 60, 61, 63, 70, or 72," with "N.J.A.C. 7:28-4, 51 through *[56 through]* 60, or 63";

7. 10 CFR 20.1003, in the definition of "licensed material," replace "special nuclear material," with "special nuclear material in quantities not sufficient to form a critical mass, diffuse NARM";

8. 10 CFR 20.1003, in the definition of "occupational dose," replace "licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person," with "licensed and unlicensed, or registered or unregistered sources of radiation, whether in possession of the licensee or registrant or other person";

9. 10 CFR 20.1003, in the definition of "public dose," replace "under the control of a licensee," with "under the control of a licensee or registrant.";

10. 10 CFR 20.1003, in the definition of "survey," replace "or other sources of radiation." with ", other sources of radiation, or radiation from ionizing radiation-producing machines." After the last sentence in the definition of "survey," add "For registrants, the survey must be made under the supervision of a qualified individual.";

11. 10 CFR 20.1003, in the definition of "unrestricted area," replace "licensee" with "licensee or registrant";

12. 10 CFR 20.1006, delete "Except as specifically authorized by the Commission in writing, no" with "No," and replace "by the General Counsel" with "signed and approved by the Commissioner of the Department,";

13. 10 CFR 20.1201, replace "licensee" with "licensee or registrant," except in 10 CFR 20.1201(e);

14. 10 CFR 20.1207, replace entire section with "The licensee or registrant shall ensure that the annual occupational dose for minors does not exceed 10 percent of the annual dose limits specified for adult workers in 10 CFR 20.1201.";

15. 10 CFR 20.1208, replace "licensee" with "licensee or registrant";

16. 10 CFR 20.1301, replace "licensee" with "licensee or registrant;" and replace "sanitary sewer system" with "domestic treatment works";

17. 10 CFR 20.1301(a)(1), replace "licensed operation" with "licensed or registered operation";

18. 10 CFR 20.2001(a)(3), replace "within the limits of §20.1301; or" with "within the limits of §20.1301, provided prior permission in writing, in the form of a New Jersey Pollutant Discharge Elimination System permit, is obtained from the Department in accordance with N.J.A.C. 7:14A for discharges to ground or surface waters; or";

19. 10 CFR 20.2003, replace "sanitary sewerage" with "domestic treatment works";

20. Replace the text of 10 CFR 20.2201(a)(2) with "Reports must be made to the address and telephone numbers indicated in N.J.A.C. 7:28-1.5";

21. 10 CFR 20.2201(b)(2)(ii), replace "Administrator of the appropriate NRC Regional Office listed in Appendix D to part 20" with "Supervisor, Radioactive Materials Section of the Department";

22. Replace the text of 10 CFR 20.2202(d) with "Reports made by licensees in response to the requirements of this section must be made to the address and telephone numbers indicated in N.J.A.C. 7:28-1.5.";

23. 10 CFR 20.2203(b)(2), replace "Privacy Act Information" with "New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.";

24. Replace the text of 10 CFR 20.2203(d) with "All licensees, who make reports under paragraph (a) of this section shall submit the report in writing either by mail or by hand delivery to the Supervisor, Radioactive Materials Section of the Department at the addresses indicated in N.J.A.C. 7:28-1.5";

25. 10 CFR 20.2204, replace "Administrator of the appropriate NRC Regional Office listed in Appendix D to part 20" with "Supervisor, Radioactive Materials Section of the Department";

26. 10 CFR 20.2206(c), replace the second sentence with "The licensee shall submit the report to the Supervisor, Radioactive Materials Section of the Department at the address indicated in N.J.A.C. 7:28-1.5."; and

27. Replace the language at 10 CFR 20.2402 with "Section 26:2D-22 of the Radiation Protection Act of 1958, as amended, provides for criminal sanctions for violation of any provision of the Act."

(e) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 7. RADIATION SURVEYS AND PERSONNEL MONITORING FOR REGISTRANTS

7:28-7.1 Surveys inside controlled areas

(a) The registrant shall ensure that controlled areas shall be surveyed by, or under the direction of, a qualified individual to determine if the installation is maintained and operations are conducted in compliance with this chapter.

(b) The registrant shall ensure that radiation levels shall be determined with the use of suitable instruments and methods.

(c) The registrant shall ensure that the record of a survey shall contain, but shall not be limited to the radiation levels, the time the radiation is produced, the workweek and the fraction of the workweek that any individual may be exposed to the radiation.

(d) The registrant shall ensure that subsequent surveys shall be conducted at such times and as frequently as may be necessary to assure that the controlled areas and operations remain in compliance with this chapter.

7:28-7.2 Surveys outside controlled areas

Surveys shall be made outside controlled areas at sufficient intervals and locations as may be necessary to insure compliance with N.J.A.C. 7:28-6.

7:28-7.3 Statement in lieu of actual survey

A written statement signed by a qualified individual and including his calculations and analysis of the dose rates in the vicinity of a radiation source may be acceptable in place of the survey required in N.J.A.C. 7:28-7.1, Surveys inside controlled areas.

SUBCHAPTER 8. RECORDS FOR REGISTRANTS

7:28-8.1 Personnel-monitoring records

(a) Clear and legible records shall be maintained by the owner for calendar quarters on Form RH-26, or on a clear and legible form containing all the information required on RH-26. These records shall show the radiation exposures of all individuals who are required to wear personnel-monitoring equipment according to N.J.A.C. 7:28-7.4, Use of personnel-monitoring equipment.

(b) Each employee, at his or her request, shall be supplied by the owner with an annual statement of his or her radiation exposure record.

(c)-(g) (No change.)

7:28-8.2 Records of surveys

(a) Records shall be maintained showing the results of such surveys as are required pursuant to N.J.A.C. 7:28-7, Radiation Surveys and Personnel Monitoring for Registrants.

(b)-(c) (No change.)

(d) The owner of any installation covered in N.J.A.C. 7:28-14 through 16 shall submit to the Department within 30 days of receipt a copy of each report of radiation surveys made in compliance with N.J.A.C. 7:28-7, Radiation Surveys and Personnel Monitoring for Registrants.

7:28-8.3 (No change in text.)

SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. LABELING, POSTING, AND CONTROLS FOR REGISTRANTS

7:28-10.1 General requirement

(a) (No change.)

(b) In addition to the language prescribed in the various sections of this subchapter, any supplementary information which might be appropriate in aiding individuals to minimize exposure to radiation may be provided on or near such required signs or labels.

7:28-10.4 Labeling of equipment

All ionizing radiation-producing machines capable, when operated, of producing a radiation area shall be labeled in a manner which cautions individuals of this fact.

7:28-10.5 (No change in text.)

7:28-10.6 Exceptions from posting and labeling requirements

Radiation areas and high radiation areas which result from the operation of therapeutic x-ray machines operated at potentials of 60 kv and below or from the operation of diagnostic x-ray machines shall be exempt from the posting requirements of N.J.A.C. 7:28-10.2, 10.3 and 10.4 provided that the operator of the equipment has taken precautions to insure that no individual other than the patient shall be in the radiation area.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. REMEDIATION STANDARDS FOR RADIOACTIVE MATERIALS

7:28-12.2 Applicability

(a) The standards and/or dose criteria in this subchapter are applicable to:

1. Remediation of radioactive contamination of real property by any technologically enhanced naturally occurring radioactive materials, source, by-product, certain special nuclear material, and diffuse NARM; and

2. Any other remediation of radioactive contamination including, without limitation, any remediation pursuant to: the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.; the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; the Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq.; the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq.; the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq.; the Regional Low Level Radioactive Waste Disposal Facility Siting Act, N.J.S.A. 13:1E-177 et seq.; any law or regulation by which the State may compel a person or licensee to perform remediation activities; or N.J.A.C. 7:26C.

(b) (No change.)

(c) The Department shall apply the radiation remediation standards and dose criteria in this chapter at applicable sites as "Applicable or Relevant and Appropriate Requirements" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq.

7:28-12.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Appropriate period of time" means the length of time determined by the Department, taking into consideration the radioactive half-life, total activity, concentration, and physical condition of the residual radioactivity, geologic stability of the area, and current and projected future demographics.

. . .

"Contaminated site" means a site as defined pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.8.

. . .

"Engineering controls" means any physical mechanism to contain or stabilize contamination or ensure the effectiveness of a remedial action. Engineering controls under this subchapter may include, without limitation, caps, covers, dikes, trenches, leachate collection systems, radon remediation systems, signs, fences, physical access controls, ground water monitoring systems and ground water containment systems including, without limitation, slurry walls and ground water pumping systems.

. . .

"Radioactive contamination or radioactive contaminant" means the collective amount of radiation emitted from one or more radionuclides in the soil, and on/in building materials and/or equipment at concentrations above natural background levels.

. . .

"Remediation standards" means the combination of numeric standards that establish a level or concentration, and narrative standards, to which radioactive contaminants must be treated, removed or otherwise cleaned for soil, ground water or surface water, as established by the Department pursuant to N.J.S.A. 58:10B-12 and this chapter, in order to meet the health risk or environmental standards.

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's or person responsible for the remediation's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee or person responsible for the remediation, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of U.S. NRC regulations at 10 CFR Part 20 or the provisions of N.J.A.C. 7:28-12.15.

. . .

"Uncontaminated surface soil" means soil whose average natural background radionuclide total concentrations are less than the remediation standards for radionuclides, and cannot exceed the background established for the site by more than two standard deviations.

. . .

7:28-12.4 General requirements

(a) Any person or licensee conducting remediation pursuant to this subchapter shall comply with the requirements of N.J.A.C. 7:26E, Technical Requirements for Site Remediation, excluding those sections related to sampling, surveying, and background investigations. Sampling, surveying and laboratory requirements shall be in accordance with N.J.A.C. 7:28-12.5.

(b) The Department shall require a licensee to provide a decommissioning plan that addresses historical site assessment, scoping, characterization, remedial action options and selection, and a final status survey report when, based on the types, quantities, and half-lives of the licensed material, such elements of the decommissioning plan are appropriate.

(c) Compliance with this subchapter shall not relieve any person or licensee from complying with more stringent cleanup standards or provisions imposed by any other applicable statute, rule or regulation.

(d) Upon Departmental approval of the remedial action workplan or similar plan, the Department may not subsequently require a change to that workplan or similar plan in order to compel a different remediation standard due to the fact that the established remediation standards have changed; however, the Department may compel a different remediation standard if the difference between the new remediation standard and the remediation standard approved by the Department in the workplan or similar plan differs by an order of magnitude.

7:28-12.5 Sampling, surveying and laboratory requirements

(a) Facilities licensed under 10 CFR Part 50 that have Nuclear Regulatory Commission-approved quality assurance plans are exempt from the requirements of this section. Otherwise, in addition to the requirements in N.J.A.C. 7:26E Appendix A IV.1, persons responsible for conducting remediations or licensees shall include the following in the radionuclide analysis reports:

1.-6. (No change.)

(b) If available, persons responsible for conducting remediations or licensees shall provide:

1.-5. (No change.)

(c) Any laboratory providing radiological analysis for soil or water shall be certified pursuant to N.J.A.C. 7:18.

(d) (No change in text.)

7:28-12.8 Radiation dose standards applicable to remediation of radioactive contamination of all real property

(a) Sites shall be remediated so that the incremental radiation dose to any person from any residual radioactive contamination at the site above that due to natural background radionuclide concentration, under either an unrestricted use remedial action, limited restricted use remedial action, or a restricted use remedial action, shall be as specified below:

1.-2. (No change.)

(b) (No change in text.)

(c) Radioactively contaminated surface water shall be remediated to comply with the New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B***-1.14(c)6***.

7:28-12.9 Minimum remediation standards for TENORM and source material contamination

(a) For radioactive contamination, the requirements of N.J.A.C. 7:28-12.8 shall be considered to be met for a specific radionuclide if:

1. Where only one radionuclide adds to the radioactive contamination of the site, the incremental concentration of the radionuclide above the natural background radionuclide concentration does not exceed the value in Table 1A, 1B (for unrestricted use), 2A, 2B (for limited restricted use), 3A, or 3B (for restricted use) below;

Tables 1A-2B (No change.)

Table 3A Allowed Incremental Derived Concentration Guideline Level of
Individual Radionuclides in Soils;
Restricted Use Standards for Radioactive Contamination (pCi/g)<(1)>

Feet of Uncontaminated Surface Soil (USS)		Feet of Vertical Extent of Residual Radionuclides (VE)								
. . .		VE1	VE2	VE3	VE4	VE5	VE6	VE7	VE8	VE9
Ac227	USS 1	17	9	6	5	5	5	5	4	4
	USS 2	17	10	7	7	6	5	5	5	5
	USS 3	17	10	10	8	6	6	6	6	6
	USS 4	17	15	10	8	8	8	8	8	8
	USS 5	17	15	10	10	10	10	10	10	10

Th232	USS 1	13	9	7	5	4	2	3	3	3
	USS 2	13	10	7	5	4	3	3	3	3
	USS 3	13	10	7	5	4	4	4	4	4
	USS 4	13	10	7	5	5	5	5	5	5
	USS 5	13	10	7	6	6	6	6	6	6

Table 3B Allowed Incremental Derived Concentration Guidance Level of Individual Radionuclides in Soils;

Restricted Use Standards for Radioactive Contamination (Bq/g) <(1)>

Feet of Uncontaminated Surface Soil (USS)		Feet of Vertical Extent of Residual Radionuclides (VE)								
		VE1	VE2	VE3	VE4	VE5	VE6	VE7	VE8	VE9
. . .										
Ac227	USS 1	0.62	0.34	0.24	0.18	0.18	0.18	0.17	0.17	0.17
	USS 2	0.63	0.36	0.24	0.24	0.23	0.20	0.19	0.19	0.19
	USS 3	0.63	0.36	0.36	0.29	0.23	0.23	0.23	0.23	0.23
	USS 4	0.63	0.54	0.37	0.29	0.28	0.28	0.28	0.28	0.28
	USS 5	0.63	0.54	0.37	0.36	0.36	0.36	0.36	0.36	0.36
Th232	USS 1	0.48	0.35	0.25	0.19	0.15	0.13	0.11	0.10	0.10
	USS2	0.48	0.39	0.26	0.19	0.15	0.13	0.12	0.12	0.12
	USS3	0.48	0.39	0.26	0.19	0.15	0.14	0.14	0.14	0.14
	USS4	0.48	0.39	0.26	0.19	0.17	0.17	0.17	0.17	0.17
	USS 5	0.48	0.39	0.26	0.22	0.22	0.22	0.22	0.22	0.22

<(1)-(3)> (No change.)

2.-3. (No change.)

(b) (No change.)

7:28-12.10 Minimum remediation standards for accelerator-produced, by-product, and certain special nuclear materials

(a) Remediation standards shall meet the requirements at N.J.A.C. 7:28-12.8.

(b) Computer models acceptable to the Department shall be used to determine the remediation standards.

(c) Modeling parameters used in developing unrestricted and restricted use standards shall be equivalent to those used in the NJDEP's model, RaSoRS, as supplemented or amended, and incorporated herein by reference, which is available on the Radiation Protection Program's website at http://www.state.nj.us/dep/rpp/index.htm.

(d) Dose calculations shall be performed out to the time of peak dose or 1,000 years, whichever is longer.

(e) Restricted use remediation standards shall meet requirements at N.J.A.C. 7:28-12.11(e) and 12.12.

7:28-12.11 Petition for alternative remediation standards for radioactive contamination

(a) In lieu of using the minimum remediation standards for radioactive contamination found at N.J.A.C. 7:28-12.9 or developed under N.J.A.C. 7:28-12.10, a person or licensee may petition the Department for an alternative remediation standard for radioactive contamination. Such an alternate remediation standard:

1. (No change.)

2. Shall not result in incremental concentrations exceeding three pCi/L (111 Bq/m<3>) of radon in indoor air in the lowest level of the building;

3. Shall not result in radionuclide in groundwater levels exceeding those in the New Jersey Groundwater Quality Standards in N.J.A.C. 7:9C; and

4. Shall not result in radionuclide in surface water levels exceeding those in the New Jersey Surface Quality Standards in N.J.A.C. 7:9B***-1.14(c)6***.

(b) The Department shall not consider a petition for an alternative remediation standard for radionuclides that is supported by increasing, in any manner, the allowed incremental dose criterion of 15 mrem/yr (0.15 mSv/yr) or the allowed incremental radon in air concentration of three pCi/L (111 Bq/m 3), or varying the parameters listed in Tables 6 or 7 below.

Tables 6 and 7 (No change.)

(c) The Department shall consider petitions only in cases where site-specific or waste specific factors, and/or site design features are used in performing the dose assessment, which are different than those used by the Department in establishing the remediation standards in N.J.A.C. 7:28-12.9 or 12.10. Factors which the Department shall consider in a petition for an alternate remediation standard include, but are not limited to:

1.-4. (No change.)

(d) A petition for an alternate remediation standard shall include an analysis demonstrating how and why the difference in factors such as those in Tables 8 and 9 above and/or indoor and outdoor occupancy times will result in substantially different remediation standards than those in N.J.A.C. 7:28-12.9.

(e) Regardless of the factors used by the petitioner or licensee, the Department shall not approve alternative standard petitions that include institutional and engineering controls where failure of those controls, not including the failure of a radon remediation system, would result in more than 100 mrem (one mSv) total annual effective dose equivalent.

(f) In the event the Department determines that sufficient evidence exists to support consideration of an alternative remediation standard, the petitioner or licensee shall submit a written analysis which demonstrates compliance with the dose limits in N.J.A.C. 7:28-12.9 or 12.10 including:

1. (No change.)

2. A dose assessment analysis, including:

i. An estimate of the radiation doses received by a post-remediation on-site resident for an unrestricted use remedial action, or by an employee (of a proposed commercial use facility) for a limited restricted use or restricted use remedial action;

ii. (No change.)

iii. Dose calculations which shall be extended for a period of 1,000 years or to the time of peak dose, whichever is longer;

iv.-vii. (No change.)

(g) (No change.)

(h) Computer models acceptable to the Department may be used by the petitioner or licensee for an alternative remediation standard to confirm that the requirements of N.J.A.C. 7:28-12.9 or 12.10 have been and will continue to be met.

7:28-12.12 Requirements pertaining to engineering or institutional controls

(a) All remediation proposals shall designate the intended use(s) of the property. Such intended use(s) shall be restricted as necessary to prevent future exposure, and shall otherwise be consistent with current and projected State and local zoning designations or land uses. For sites not remediated to the unrestricted use standards in N.J.A.C. 7:28-12.9 or 12.10, the Department shall define the nature and duration of all appropriate engineering or institutional controls necessary to meet the standards in N.J.A.C. 7:28-12.9, 12.10, or 12.11(a), based upon the particular conditions of the site.

(b) In order for any remediation under this subchapter requiring engineering controls or institutional controls to meet the standards in N.J.A.C. 7:28-12.9, 12.10, or 12.11(a), the person responsible for conducting the remediation, or licensee, shall, in addition to meeting the provisions of N.J.S.A. 58:10B-13:

1. (No change.)

2. Provide sufficient financial assurance for the costs of implementing and maintaining the requisite active engineered or institutional controls for an appropriate period of time. Acceptable financial assurance mechanisms are set forth at 10 CFR 20.1403(c), incorporated herein by reference.

(c) A person responsible for conducting the remediation, or the licensee, shall conduct public outreach if the Department determines that outreach is needed, or when the Department determines that there is substantial public interest in activities concerning restricted release license termination.

1. The Department may determine that there is substantial public interest when it receives:

i. A petition containing the signatures of 25 or more people that live or work within 200 feet of the site, if contamination has not migrated from the site boundary;

ii. A petition containing the signatures of 25 ***or more*** people that live or work within 200 feet of the extent of contamination, if contamination has migrated from the site boundary; or

iii. A written request by a municipal official, such as a mayor or chairperson of an environmental commission, or a designated local health official.

2. When the Department determines that there is substantial public interest, the Department shall notify the person responsible for conducting the remediation or the licensee and post a summary of findings on the Department's web site at www.state.nj.us/dep; and

3. The person responsible for conducting the remediation or the licensee shall develop and implement enhanced public notice based on the expressed needs of the community and may include the following:

i. Publicizing and hosting an information session or public meeting;

ii. Publishing a notice containing basic information about the site in the local paper of record; or

iii. Establishing a local information repository.

4. The notifications required pursuant to this section are not intended to satisfy the public participation requirements applicable to sites subject to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. and the National Contingency Plan, 40 CFR Part 300.

7:28-12.13 Requirements pertaining to a change in land use

(a) Any subsequent proposed use of a property that is different from the intended use (other than unrestricted use remedial actions) described in the original remediation proposal shall require a prior review and prior approval by the Department. To initiate this review, 90 calendar days prior to a proposed change in land use, the person or licensee proposing such use shall prepare and submit to the Department, at the Bureau of Environmental Radiation, PO Box 415, Trenton, NJ 08625-0415, and to each affected municipality, a brief written description of the new proposed use as compared to the intended use upon which the original remediation was based including all planned soil excavations, and any additional remedial actions to be implemented.

(b) If the Department determines that the proposed new use may cause the dose limitations of N.J.A.C. 7:28-12.8 to be exceeded, the person or licensee requesting the use change shall be required to prepare and submit to the Department's Bureau of Environmental Radiation, PO Box 415, Trenton, NJ 08625-0415, a dose assessment analysis, containing the information required under N.J.A.C. 7:28-12.11(f)2, (g), and (h), to ascertain whether the dose limitation requirements of N.J.A.C. 7:28-12.8 will be met for the proposed new use.

(c) In preparing the dose assessment analysis, the person or licensee may incorporate into the new use plan new remedial measures such as different radionuclide in soil concentrations, or radioactive contamination vertical extents, and/or new engineering or institutional controls, provided that for engineering or institutional controls, the person responsible for conducting the remediation or licensee provides for the cost of implementing and maintaining them as specified in N.J.A.C. 7:28-12.12(c)3.

7:28-12.14 (No change in text.)

7:28-12.15 Requirements pertaining to onsite burial or capping

(a) No owner or licensee shall bury or construct an engineered barrier (cap) over radioactive material onsite unless the requirements of N.J.A.C. 7:28-12.8 and 12.11 are met.

(b) Owners or licensees with sites that have been used for burial of radioactive materials or where radioactive material has been capped, shall not be allowed to convert these sites to other uses unless the requirements of N.J.A.C. 7:28-12.8 and 12.11 are met.

(c) The owner or licensee of any burial ground or capped material shall notify the Department in writing not less than 30 days in advance of any transfer of title to the property involved.

APPENDIX A

. . .

Allowed Incremental Derived Concentration Guideline Levels (pCi/g) for the Gamma and Intake Pathways <(1)>

Feet of Uncontaminated Surface Soil (USS)		Feet of Vertical Extent of Residual Radionuclides (VE)								
		VE1	VE2	VE3	VE4	VE5	VE6	VE7	VE8	VE9
Ra226 Restricted Standards	USS 1	18	15	10	8	6	5	5	4	4
	USS 2	18	15	10	8	6	5	5	5	5
	USS 3	18	15	10	8	6	6	6	6	6
	USS 4	18	15	10	8	7	7	7	7	7
	USS 5	18	15	10	9	9	9	9	9	9

Allowed Incremental Derived Concentration Guideline Levels (Bq/g) for the Gamma and Intake Pathways <(1)>

Nuclide	Feet of Vertical Extent of Residual Radionuclides (VE)								
	VE1	VE2	VE3	VE4	VE5	VE6	VE7	VE8	VE9
Ra226 Unrestricted Use Standards	0.13	0.09	0.09	0.09	0.09	0.09	0.09	0.08	0.08
Ra226 Limited Restricted Use Standards	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.15	0.15

Allowed Incremental Derived Concentration Guideline Levels (Bq/g) for the Gamma and Intake Pathways <(1)>

Feet of Uncontaminated Surface Soil (USS)	Feet of Vertical Extent of Residual Radionuclides (VE)								
	VE1	VE2	VE3	VE4	VE5	VE6	VE7	VE8	VE9
Ra226									

Restricted Standards	USS 1	0.67	0.55	0.37	0.30	0.22	0.18	0.18	0.15	0.15
	USS 2	0.67	0.56	0.37	0.30	0.22	0.18	0.18	0.18	0.18
	USS 3	0.67	0.56	0.37	0.30	0.22	0.22	0.22	0.22	0.22
	USS 4	0.67	0.56	0.37	0.30	0.23	0.23	0.26	0.26	0.26
	USS 5	0.67	0.56	0.37	0.33	0.33	0.33	0.33	0.33	0.33

<(1)> (No change in text.)

SUBCHAPTER 13. REPORTS OF THEFTS AND RADIATION INCIDENTS FOR REGISTRANTS

7:28-13.1 Reports of theft or loss

A registrant shall immediately notify the Department by telephone, telefax or telegraph of any theft or loss of any ionizing radiation-producing machine under such circumstances that a substantial radiation hazard may result.

7:28-13.2 Reportable radiation incidents

(a) A registrant shall immediately notify the Department by telephone, telefax or telegraph of any radiation incident which may have caused or threatens to cause the following:

1. (No change.)

Recodify existing 3. and 4. as 2. and 3. (No change in text.)

(b) (No change.)

(c) A registrant shall notify the Department within 24 hours by telephone, telefax or telegraph of any radiation incident which may have caused or threatens to cause the following:

1. (No change.)

Recodify existing 3. and 4. as 2. and 3. (No change in text.)

(d) (No change.)

(e) A registrant shall notify the Department in writing within 30 days of the following:

1. Each exposure of an individual to radiation in excess of any applicable limit of N.J.A.C. 7:28-6;

2. (No change.)

3. Levels of radiation not involving exposure of any individual in excess of any applicable limit of N.J.A.C. 7:28-6 outside a controlled area in excess of 10 times the limits of N.J.A.C. 7:28-6, Standards for Protection Against Radiation.

(f) The reports set forth in (e) above shall describe the extent of exposure of individuals to radiation, the levels of radiation, the cause of the exposure and/or levels, and corrective steps taken or planned to assure against a recurrence.

(g) In each case where (e)1 above requires a report to the Department of exposure of an individual, the owner shall:

1. (No change.)

2. Concurrently give written notification to the individual of the nature and extent of the exposure. Such notice shall contain the following statement: "This report is furnished to you under the provisions of N.J.A.C. 7:28-13, Reports of Thefts and Radiation Incidents for Registrants. You should preserve this report for future reference."

SUBCHAPTER 17. INDUSTRIAL AND NONMEDICAL X-RAY RADIOGRAPHY

7:28-17.1 Scope

(a) This subchapter establishes radiation-safety requirements for persons utilizing ionizing radiation-producing machines for industrial and nonmedical radiography.

(b)-(d) (No change.)

7:28-17.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

. . .

"Temporary job site" means any location where industrial radiography is performed other than the location(s) listed in a registration issued by the Department pursuant to N.J.A.C. 7:28-3.

7:28-17.3 Registration requirements

All owners of ionizing radiation-producing machines shall comply with N.J.A.C. 7:28-3.

7:28-17.4 Equipment control

(a) (Reserved.)

(b) (No change.)

(c) All ionizing radiation-producing machines shall be kept locked at all times except when under the direct surveillance of a radiographer or of a radiographer's assistant or as provided in N.J.A.C. 7:28-17.6(a).

(d) (Reserved.)

(e) (No change.)

(f)-(j) (Reserved)

(k) Each owner shall maintain current logs, which shall be kept available for inspection by the Department at the address specified in the *[license]* ***registration***, showing for each radiation source the following information.

1. A description, or make and model number of the ionizing radiation-producing machine;

2.-3. (No change.)

(l) Each owner conducting industrial radiography at a temporary job site shall make the following records available at the site for inspection by the Department:

1. (Reserved.)

2. A copy of the owner's current registration of a ionizing radiation-producing machine issued by the Department pursuant to N.J.A.C. 7:28-3;

3. (Reserved.)

4.-6. (No change.)

7. Daily pocket dosimeter records for the period of operation at the site required to be made pursuant to N.J.A.C. 7:28-17.5; and

8. A copy of the latest instrument calibration and the original log of daily instrument operational check source test results for the specific devices in use at the site required to be made pursuant to (e)1 and 2 above.

7:28-17.5 Personal radiation safety requirements for radiographers

(a) The owner shall not permit any person to act as a radiographer until such person:

1.-2. (No change.)

3. Has demonstrated competence to use the ionizing radiation-producing machines and survey instruments which will be employed in his or her assignment.

(b) The outline of the course for radiographer's training is as follows:

1. Fundamentals of radiation safety:

i.-iii. (No change.)

iv. Levels of radiation from ionizing radiation-producing machines;

v. (No change.)

2. (No change.)

3. Radiographic equipment to be used:

i. (No change.)

ii. (Reserved)

iii.-iv. (No change.)

4.-5. (No change.)

(c) The owner shall not permit any person to act as a radiographer's assistant until such person:

1. (No change.)

2. Has demonstrated competence to use under the personal supervision of the radiographer the ionizing radiation-producing machines and radiation-survey instruments which will be employed in his or her assignment; and

3. (No change.)

(d) The owner shall prepare written operating and emergency procedures which shall include instructions in at least the following:

1. The handling and the use of ionizing radiation-producing machines to be employed such that no person is likely to be exposed to radiation doses in excess of the limits established in N.J.A.C. 7:28-6;

2.-3. (No change.)

4. Methods and occasions for locking and securing ionizing radiation-producing machines;

5. (No change.)

6. (Reserved.)

7.-9. (No change.)

(e) (No change.)

7:28-17.6 Precautionary procedures in radiographic operations

(a)-(c) (No change.)

(d) In addition to the requirements of N.J.A.C. 7:28-7, no radiographic operation shall be conducted unless the owner ensures that radiation surveys are made and recorded as follows:

1. (No change.)

2. (Reserved.)

3. (Reserved.)

4. Clear and legible records shall be kept of the surveys that are required by (d)1 above and maintained for inspection by the Department.

7:28-17.8 Shielded room radiography

(a) No person shall operate or permit the operation of any ionizing radiation-producing machine used in shielded room radiography unless the equipment, installation, and personnel meet the requirements of N.J.A.C. 7:28-17.1 through 17.6 and this section.

(b) No person shall operate or permit any person to operate an ionizing radiation-producing machine used in shielded room radiography until such operator has completed the following requirements:

1.-3. (No change.)

(c) Each owner shall supply appropriate personnel monitoring equipment and shall require that it be used by every individual who operates, makes "set-ups," or performs maintenance on an ionizing radiation-producing machine used in shielded room radiography.

(d) (No change.)

(e) No person shall enter an enclosed room in which shielded room radiography is performed until after a physical radiation survey is conducted to determine whether the ionizing radiation producing machine is off. A record shall be maintained of the date and exposure rate measured for each physical radiation survey and shall be made available for inspection by the Department.

(f)-(g) (No change.)

(h) All ionizing radiation-producing machines used in shielded room radiography and all objects exposed thereto shall be confined within an installation or structure designed or intended for radiography and in which radiography is regularly performed in accordance with the following requirements:

1.-6. (No change.)

SUBCHAPTER 18. MAJOR NUCLEAR FACILITIES

7:28-18.1 Scope

(a)-(b) (No change.)

(c) The intent of this section is to insure that individuals outside of these facilities receive no radiation exposures from environmental or direct radiation that are in excess of the limits of N.J.A.C. 7:28-6.

SUBCHAPTER 48. FEES FOR THE REGISTRATION OF NONIONIZING RADIATION PRODUCING SOURCES

7:28-48.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Radiation area" means an area which is accessible to a worker and in which there exists levels of nonionizing radiation that exceed the maximum permissible levels of such radiation as specified in the rules of the Commission.

. . .

SUBCHAPTER 49. (RESERVED.)

SUBCHAPTER 50. NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

7:28-50.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 19, Notices, Instructions and Reports to Workers: Inspection and Investigations.

(b) The following provisions of 10 CFR Part 19 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 19.5, Communications; and

2. 10 CFR 19.8, Information collection requirements: OMB approval.

(c) The following provisions of 10 CFR Part 19 are incorporated by reference with the specified changes:

1. At 10 CFR 19.2, Scope, delete references to 10 CFR Parts 50, 60, 63, 72 and 76;

2. At 10 CFR 19.3, Definitions, "Commission" shall mean the New Jersey Department of Environmental Protection;

3. "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 19 of the Code of Federal Regulations that are incorporated by reference, mean the New Jersey Department of Environmental Protection, except when specifically noted in this subchapter;

4. 10 CFR 19.4, delete "Except as specifically authorized by the Commission in writing, no" with "No," and replace "by the General Counsel" with "signed and approved by the Commissioner of the Department,";

5. 10 CFR 19.11(a)(1), replace "Part 20" with "N.J.A.C. 7:28-6";

6. 10 CFR 19.13(b), replace "§20.2106 of 10 CFR Part 20" with "N.J.A.C. 7:28-6";

7. 10 CFR 19.13(c)(1)(i), replace "§20.2106" with "N.J.A.C. 7:28-6";

8. 10 CFR 19.13(c)(1)(i), replace "§20.1502" with "N.J.A.C. 7:28-6";

9. 10 CFR 19.13(d), replace "§§20.2202, 20.2203, 20.2204, or 20.2206 of this Chapter" with "N.J.A.C. 7:28-6";

10. 10 CFR 19.17(a), replace all references to "Executive Director for Operations" with "Chief, Bureau of Environmental Radiation of the Department";

11. 10 CFR 19.17(a) and (b), replace all references to "Administrator of the appropriate Regional Office" with "Supervisor, Radioactive Materials Section";

12. 10 CFR 19.18(b), replace "Office of the General Counsel" with "Office of the Attorney General of New Jersey";

13. 10 CFR 19.20, delete references to 10 CFR Parts 50, 60, 63, 72 and 76; and

14. 10 CFR 19.32, add "Allegations of discrimination are to be reported to the Division on Civil Rights, Department of Law and Public Safety, 140 East Front Street, P.O. Box 089, Trenton, New Jersey, 08625-089."

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, "Notice to Employees" shall mean the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation," available from the Department via the Department's website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462.

(e) Those facilities which possess a license from the Department and the NRC for radioactive materials shall post both the NRC's Form 3, "Notice to Employees," and the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation."

(f) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(g) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 51. RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

7:28-51.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 30, Rules of General Applicability to Domestic Licensing of Byproduct Material.

(b) The following provisions of 10 CFR Part 30 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 30.4, Definitions, the following definitions are not incorporated by reference: "act," "byproduct material," "curie," "decommission," "department" and "Department of Energy," "effective dose equivalent," "government agency," "license," "medical use," "person," "source material" and "special nuclear material";

2. 10 CFR 30.6, Communications;

3. 10 CFR 30.8, Information collection requirements: OMB approval;

4. 10 CFR 30.21(c), Radioactive drug: Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans;

5. 10 CFR 30.34(d), (e)(1) and (e)(3), Terms and conditions of licenses;

6. 10 CFR 30.41(a)(6), Transfer of byproduct material; and

7. 10 CFR 30.55, Tritium reports.

(c) The following provisions of 10 CFR Part 30 are incorporated by reference with the specified changes:

1. 10 CFR 30.4, Definitions, "Commission" shall mean the New Jersey Department of Environmental Protection;

2. "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 30 of the Code of Federal Regulations that are incorporated by reference, mean the New Jersey Department of Environmental Protection, except when specifically noted in this subchapter;

3. 10 CFR 30.5, delete "Except as specifically authorized by the Commission in writing, no" with "No," and replace "by the General Counsel" with "signed and approved by the Commissioner of the Department,";

4. 10 CFR 30.9(b), replace all references to "Administrator of the appropriate Regional Office" with "Supervisor, Radioactive Materials Section";

5. 10 CFR 30.10(b), replace "10 CFR part 2, subpart B" with " N.J.S.A. 26:2D-13";

6. 10 CFR 30.12, replace "when the Commission determines that the exemption of the prime contractor or subcontractor is authorized by law" with "when the Department and the Commission on Radiation Protection determine that the exemption of the prime contractor or subcontractor is in accordance with N.J.A.C. 7:28-2.8";

7. 10 CFR 30.14(c), add "the Department" after "holding a specific license issued by";

8. 10 CFR 30.14(c), "Commission" shall mean the U.S. Nuclear Regulatory Commission;

9. 10 CFR 30.15(a), delete "20 and" and add "and N.J.A.C. 7:28-6" after "of this Chapter";

10. 10 CFR 30.16, delete "20 and" and add "and N.J.A.C. 7:28-6" after "of this Chapter";

11. 10 CFR 30.19(a), delete "20 and" and add "and N.J.A.C. 7:28-6" after "of this Chapter";

12. 10 CFR 30.20(a), delete "20 and" and add "and N.J.A.C. 7:28-6" after "of this Chapter";

13. 10 CFR 30.32(a), replace the first sentence with "Application for specific licenses and renewals from the State shall be filed with Department on forms available from the Department";

14. 10 CFR 30.32(e), replace all references to 10 CFR Part 170 with N.J.A.C. 7:28-64;

15. 10 CFR 30.33(a)(5), replace "Director Office of Federal and State Materials and Environmental Management Program," with "Manager, Bureau of Environmental Radiation";

16. 10 CFR 30.35(c)(5), replace "10 CFR Part 20, Appendix G" with "N.J.A.C. 7:28-6";

17. 10 CFR 30.35(c)(5), replace "10 CFR Part 20" with "N.J.A.C. 7:28-12";

18. 10 CFR 30.35(g)(3)(i), replace " 10 CFR 20.1003" with "N.J.A.C. 7:28-6";

19. 10 CFR 30.35(g)(3)(iii), replace " 10 CFR 20.2108" with "N.J.A.C. 7:28-6";

20. 10 CFR 30.35(g)(3)(iv), replace "10 CFR Part 20, subpart E" with "N.J.A.C. 7:28-12";

21. 10 CFR 30.35(g)(3)(iv), replace " 10 CFR 20.2002" with "N.J.A.C. 7:28-6";

22. 10 CFR 30.36(j)(2), replace "10 CFR Part 20, subpart E" with "N.J.A.C. 7:28-12";

23. 10 CFR 30.36(k)(3)(i), replace "10 CFR Part 20, Subpart E" with "N.J.A.C. 7:28-12";

24. 10 CFR 30.36(k)(3)(ii), replace "10 CFR Part 20, subpart E" with "N.J.A.C. 7:28-12";

25. 10 CFR 30.37(a), replace the wording of (a) with "Application for renewal of a specific State license shall be filed with the Department on forms available from the Department";

26. 10 CFR 30.38, Change the title of the section from "Application for amendment of licenses" to "Amendment of licenses." Replace "Applications for amendment of a license shall be filed on Form NRC-313 in accordance with 30.32" with "Requests to amend a license shall be shall be submitted in letter form to the Department";

27. 10 CFR 30.50(b)(1)(ii), replace "appendix B of §§20.1001-20.2401 of 10 CFR Part 20" with " N.J.A.C. 7:28-6.1";

28. 10 CFR 30.50(b)(4)(i), replace "appendix B of §§20.1001-20.2401 of 10 CFR Part 20" with " N.J.A.C. 7:28-6.1";

29. 10 C.F.R 30.50(c)(2), replace "appropriate NRC Regional office listed in appendix D to part 20 of this Chapter" with "Department";

30. 10 CFR 30.51(d), replace "appropriate NRC Regional Office" with "Department";

31. 10 CFR 30.51(d)(1), replace "§§20.2002 (including burials authorized before January 28, 1981), 20.2003, 20.2004, 20.2005" with "N.J.A.C. 7:28-6";

32. 10 CFR 30.51(d)(2), replace "§20.2103(b)(4)" with N.J.A.C. 7:28-6";

33. 10 CFR 30.51(e)(1), replace "§§20.2002 (including burials authorized before January 28, 1981), 20.2003, 20.2004, 20.2005" with "N.J.A.C. 7:28-6";

34. 10 CFR 30.51(e)(2), replace "§20.2103(b)(4)" with N.J.A.C. 7:28-6"; and

35. 10 CFR 30, Appendix B to Part 30--Quantities of Licensed Material Requiring Labeling, end Note, replace "§20.303" with "N.J.A.C. 7:28-6."

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, "Notice to Employees" shall mean the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radia-

tion," available from the Department via the Department's website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462.

(e) Those facilities which possess a license from the Department and the NRC for radioactive materials shall post both the NRC's Form 3, "Notice to Employees" and the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation."

(f) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(g) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 52. GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

7:28-52.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 31, General Domestic Licenses for Byproduct Material.

(b) The following provisions of 10 CFR Part 31 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR Part 31.4, Information collection requirements: OMB approval.

(c) The following provisions of 10 CFR Part 31 are incorporated by reference with the specified changes:

1. "Commission," "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 31 of the Code of Federal Regulations that are incorporated by reference, means the Department, except when specifically noted in this subchapter;

2. 10 CFR 31.2, delete "20," and add "and N.J.A.C. 7:28-6" after "of this chapter";

3. 10 CFR 31.5(c)(5), replace "§20.1402" with "N.J.A.C. 7:28-12";

4. 10 CFR 31.5(c)(9)(i), replace "20.2201, and 20.2202" with "and N.J.A.C. 7:28-6";

5. 10 CFR 31.5(c)(10), replace "§§20.2201, and 20.2202 of this chapter" with "N.J.A.C. 7:28-6";

6. 10 CFR 31.5(c)(10), delete "20," and add "and N.J.A.C. 7:28-6" after "of this chapter";

7. 10 CFR 31.5(c)(13)(ii), after "fee required by" replace "Section 170.31" with "N.J.A.C. 7:28-64";

8. 10 CFR 31.5(c)(13)(iv), the terms "NRC" and "Commission" mean the U.S. Nuclear Regulatory Commission;

9. 10 CFR 31.5(c)(14), replace "Director of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001" with "Department";

10. 10 CFR 31.7(b), delete "20," and add "N.J.A.C. 7:28-6" after "of this chapter";

11. 10 CFR 31.7(b), replace "§§20.2201, and 20.2202" with "N.J.A.C. 7:28-6";

12. 10 CFR 31.8(c), delete "20," and add ", as well as N.J.A.C. 7:28-6" after the second "of this chapter";

13. 10 CFR 31.10(b)(1), replace "§20.2001" with "N.J.A.C. 7:28-6";

14. 10 CFR 31.10(b)(3), delete "20," and add "and N.J.A.C. 7:28-6,";

15. 10 CFR 31.10(b)(3), replace "§§20.2001, 20.2201, and 20.2202 of this chapter" with "N.J.A.C. 7:28-6";

16. 10 CFR 31.11(c)(5), replace "§20.2001" with "N.J.A.C. 7:28-6";

17. 10 CFR 31.11(e), add "radioactive materials" prior to "registrant";

18. 10 CFR 31.11(f), delete "20," and add "and N.J.A.C. 7:28-6" after "of this chapter"; and

19. 10 CFR 31.11(f), replace "§§20.2001, 20.2201, and 20.2202" with "N.J.A.C. 7:28-6."

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, "Notice to Employees," shall mean the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation," available from the Department via the Department's website at www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462.

(e) Those facilities which possess a license for radioactive materials from both the Department and the NRC shall post both the NRC's Form 3, "Notice to Employees," and the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation."

(f) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(g) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 53. SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

7:28-53.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 32, Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.

(b) The following provisions of 10 CFR Part 32 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 32.8, Information collection requirements: OMB approval;

2. 10 CFR 32.11, Introduction of byproduct material in exempt concentrations into products or materials, and transfer of ownership or possession: Requirements for license;

3. 10 CFR 32.12, Same: Records and material transfer reports;

4. 10 CFR 32.14, Certain items containing byproduct material; requirements for license to apply or initially transfer;

5. 10 CFR 32.15, Same: Quality assurance, prohibition of transfer, and labeling;

6. 10 CFR 32.16, Certain items containing byproduct material: Records and reports of transfer;

7. 10 CFR 32.18, Manufacture, distribution and transfer of exempt quantities of byproduct material: Requirements for license;

8. 10 CFR 32.19, Same: Conditions of licenses;

9. 10 CFR 32.20, Same: Records and material transfer reports;

10. 10 CFR 32.21, Radioactive drug: Manufacture, preparation or transfer for commercial distribution of capsules containing carbon-14 urea each for "in vivo" diagnostic use for humans to persons exempt from licensing; Requirements for a license;

11. 10 CFR 32.21a, Same: Conditions of license;

12. 10 CFR 32.22, Self-luminous products containing tritium, krypton-85 or promethium 147: Requirements for license to manufacture, process, produce, or initially transfer;

13. 10 CFR 32.23, Same: Safety criteria;

14. 10 CFR 32.25, Conditions of licenses issued under Part 32.22: Quality control, labeling, and reports of transfer;

15. 10 CFR 32.26, Gas and aerosol detectors containing byproduct material: Requirements for license to manufacture, process, produce, or initially transfer;

16. 10 CFR 32.27, Same: Safety criteria;

17. 10 CFR 32.28, Same: Table of organ doses;

18. 10 CFR 32.29, Conditions of licenses issued under 32.26: Quality control, labeling, and reports of transfer;

19. 10 CFR 32.40, Schedule A-Prototype tests for automobile lock illuminators; and

20. 10 CFR 32.210, Registration of product information.

(c) The following provisions of 10 CFR Part *[30]* ***32*** are incorporated by reference with the specified changes:

1. 10 CFR 32.52(a), replace "Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001," with "New Jersey Department of Environmental Protection, Radioactive Materials Section, P.O. Box 415, Trenton, New Jersey 08625-0415";

2. 10 CFR 32.56, replace "Director of Nuclear Material Safety and Safeguards," with "Department";

3. "Commission," "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 32 of the Code of Federal Regulations that are incorporated by reference, mean the Department, except when specifically noted in this subchapter;

4. 10 CFR 32.2, in the definition of "nationally tracked source," replace "part 20 of this Chapter" with "10 CFR part 20 as incorporated by reference in N.J.A.C. 7:28-6";

5. 10 CFR 32.51(a)(2)(ii), replace "§20.1201(a) of this chapter" with "N.J.A.C. 7:28-6";

6. 10 CFR 32.51(a)(4), replace "§20.1901 of this chapter" with "N.J.A.C. 7:28-6";

7. 10 CFR 32.51(a)(5), replace "§20.1901 of this chapter" with "N.J.A.C. 7:28-6";

8. 10 CFR 32.51(c), replace "§20.1201(a) of this chapter" with "N.J.A.C. 7:28-6";

9. 10 CFR 32.51a(a)(2), add "and" between "31.2," and "30.51";

10. 10 CFR 32.51a(a)(2), delete "20.2201, and 20.2202" and add "and N.J.A.C. 7:28-6" after "of this chapter";

11. 10 CFR 32.51a(b)(1), add "and" between "31.2" and "30.51" in both locations;

12. 10 CFR 32.51a(b)(1), delete "20.2201, and 20.2202" from both locations and add "and N.J.A.C. 7:28-6" after "of this chapter" in both locations;

13. 10 CFR 32.54(a), replace "§20.1901 of this chapter" with "N.J.A.C. 7:28-6";

14. 10 CFR 32.61(d), replace "§20.1901(a) of this chapter" with "N.J.A.C. 7:28-6";

15. 10 CFR 32.71(c)(2), replace "§20.1901(a) of this chapter" with "N.J.A.C. 7:28-6"; and

16. 10 CFR 32.71(e), replace "§20.2001" with "N.J.A.C. 7:29-6."

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, "Notice to Employees" shall mean the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation," available from the Department via the Department's website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462.

(e) Those facilities which possess a license from the Department and the NRC for radioactive materials shall post both the NRC's Form 3, "Notice to Employees," and the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation."

(f) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(g) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 54. SPECIFIC DOMESTIC LICENSES OF BROAD SCOPE FOR BYPRODUCT MATERIAL

7:28-54.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 33, Specific Domestic Licenses of Broad Scope for Byproduct Material.

(b) The following provisions of 10 CFR Part 33 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 33.8, Information collection requirements: OMB approval.

(c) The following provisions of 10 CFR Part 33 are incorporated by reference with the specified changes:

1. "Commission," "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 33 of the Code of Federal Regulations that are incorporated by reference, mean the Department; and

2. 10 CFR 33.12, replace with "Application for specific licenses from the State and renewals shall be filed with Department on forms available from the Department."

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, "Notice to Employees," shall mean the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation," available from the Department via the Department's website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462.

(e) Those facilities which possess a license from the Department and the NRC for radioactive materials shall post both the NRC's Form 3, "Notice to Employees," and the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation."

(f) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(g) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 55. MEDICAL USE OF BYPRODUCT MATERIAL

7:28-55.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 35, Medical Use of Byproduct Material.

(b) The following provisions of 10 CFR Part 35 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 35.8, Information collection requirements: OMB approval; and

2. 10 CFR 35.63(b)(2)(i).

(c) The following provisions of 10 CFR Part 35 are incorporated by reference with the specified changes:

1. "Commission," "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 35 of the Code of Federal Regulations, that are incorporated by reference, means the Department, except when specifically noted in this subchapter;

2. 10 CFR 35.1, delete "20," and add "and N.J.A.C. 7:28-6" after "of this chapter";

3. 10 CFR 35.12(b)(1), replace "Filing an original and one copy of NRC Form 313, "Application for Material License," with "Filing an original application for a specific license from the State with the Department on forms available from the Department,";

4. 10 C.F.R 35.12(c), delete the wording "amendment or";

5. 10 CFR 35.12(c)(1), delete the wording "and one copy" and "either";

6. 10 CFR 35.12(c)(1)(i), delete the wording "NRC Form 313, 'Application for Material License,'; or" and replace with "an initial application or renewal application form available from the Department";

7. 10 CFR 35.12(c)(1)(ii), delete wording "or renewal";

8. 10 CFR 35.12(d), create new wording for (d) to state "A request for an amendment must be made by submitting a letter requesting the amendment with relevant supporting documentation as required by 35.610, 35.642, 35.643, and 35.645, as applicable";

9. 10 CFR 35.12(d), change existing citation to 35.12(e);

10. 10 CFR 35.12(e), change existing citation to 35.12(f);

11. 10 CFR 35.18(a)(1), delete the wording "NRC Form 313 'Application for Material License,' and replace with "an original application for a specific license from the State";

12. 10 CFR 35.24(a), replace "§20.1101 of this chapter" with "N.J.A.C. 7:28-6";

13. 10 CFR 35.61(a), replace "10 CFR Part 20" with "N.J.A.C. 7:28-6";

14. 10 CFR 35.70(a), replace "Part 20 of this chapter" with "N.J.A.C. 7:28-6";

15. 10 CFR 35.80(a)(4), replace "Part 20 of this chapter" with "N.J.A.C. 7:28-6";

16. 10 CFR 35.310(a)(2)(i), replace "§20.1301(a)(1) of this chapter" with "N.J.A.C. 7:28-6";

17. 10 CFR 35.310(a)(2)(ii), replace "§20.1301(c) of this chapter" with "N.J.A.C. 7:28-6";

18. 10 CFR 35.410(a)(4)(i), replace "§20.1301(a)(1) of this chapter" with "N.J.A.C. 7:28-6";

19. 10 CFR 35.410(a)(4)(ii), replace "§20.1301(c) of this chapter" with "N.J.A.C. 7:28-6";

20. 10 CFR 35.652(a), replace "§20.1501 of this chapter" with "N.J.A.C. 7:28-6";

21. 10 CFR 35.3045(c), replace "NRC Operations Center" with "Department";

22. 10 CFR 35.3047(c), replace "NRC Operations Center" with "Department";

23. 10 CFR 35.3047(d), replace "appropriate NRC Regional Office listed in §30.6 of this chapter" with "Department"; and

24. 10 CFR 35.3067, replace "appropriate NRC Regional Office listed in §30.6 of this chapter" with "Department" and delete ", with a copy to the Director, Office of Nuclear Material Safety and Safeguards."

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, "Notice to Employees" shall mean the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation," available from the Department via the Department's website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462.

(e) Those facilities which possess a license from the Department and the NRC for radioactive materials shall post both the NRC's Form 3, "Notice to Employees" and the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation."

(f) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(g) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 56. LICENSES AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS

7:28-56.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 36, Licenses and Radiation Safety Requirements for Irradiators.

(b) The following provisions of 10 CFR Part 36 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 36.8, Information collection requirements: OMB approval.

(c) The following provisions of 10 CFR Part 36 are incorporated by reference with the specified changes:

1. "Commission," "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 36 of the Code of Federal Regulations that are incorporated by reference, means the Department, except when specifically noted in this subchapter;

2. 10 CFR 36.1(a), delete "20," and add "N.J.A.C. 7:28-6" after "of this chapter";

3. 10 CFR 36.11, replace "Form NRC 313, 'Application for Material License,'" with "forms available from the Department," delete "and one copy," and replace "appropriate NRC Regional Office listed in appendix D to part 20 of this chapter" with "Department";

4. 10 CFR 36.17, replace "Commission" with "Department, with approval of the Commission on Radiation Protection," and replace "by law and will not endanger life or property or the common defense and security and are otherwise in the public interest" with "in accordance with the provisions of N.J.A.C. 7:28-2.8";

5. 10 CFR 36.23(g), replace " 10 CFR 20.1902" in both locations with "N.J.A.C. 7:28-6";

6. 10 CFR 36.55(a), replace " 10 CFR 20.1501(c)" with "N.J.A.C. 7:28-6";

7. 10 CFR 36.57(d), replace "10 CFR part 20, table 2, column 2 or table 3 of appendix B" with "as incorporated by reference in N.J.A.C. 7:28-6"; and

8. 10 CFR 36.59(c), replace "table 2, column 2, appendix B to part 20" with "as incorporated by reference in N.J.A.C. 7:28-6."

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, "Notice to Employees" shall mean the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation," available from the Department via the Department's website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462.

(e) Those facilities which possess a license from the Department and the NRC for radioactive materials shall post both the NRC's Form 3, "Notice to Employees" and the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation."

(f) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(g) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 57. LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

7:28-57.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 39, Licenses and Radiation Safety Requirements for Well Logging.

(b) The following provisions of 10 CFR Part 39 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 39.8, Information collection requirements: OMB approval.

(c) The following provisions of 10 CFR Part 39 are incorporated by reference with the specified changes:

1. "Commission," "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 39 of the Code of Federal Regulations that are incorporated by reference, means the Department, except when specifically noted in this subchapter;

2. 10 CFR 39.1(a), delete "20," and add "and N.J.A.C. 7:28-6" after "of this chapter";

3. 10 CFR 39.11, replace "Form NRC 313, "Application for Material License." with "forms available from the Department" and replace "appropriate NRC Regional Office listed in appendix D of part 20 of this chapter" with "Department";

4. 10 CFR 39.15(a)(5)(iii)(B), replace "§20.1901(a)" with "N.J.A.C. 7:28-6";

5. 10 CFR 39.31(a)(1), replace "§20.1901(a)" with "N.J.A.C. 7:28-6";

6. 10 CFR 39.31(a)(2), replace "§20.1901(a)" with "N.J.A.C. 7:28-6";

7. 10 CFR 39.33(a), replace "part 20 of this chapter" with "N.J.A.C. 7:28-6";

8. 10 CFR 39.35(d)(2), replace "appropriate NRC Regional Office listed in appendix D of part 20 of this chapter" with "Department";

9. 10 CFR 39.61(a)(2)(i), delete "20," and add "and N.J.A.C. 7:28-6" after "of this chapter";

10. 10 CFR 39.61(b)(1), delete "parts 19 and 20 of this chapter" and add "part 19 of this chapter and N.J.A.C. 7:28-6";

11. 10 CFR 39.63(h), replace "§20.1906 of this chapter" with "N.J.A.C. 7:28-6";

12. 10 CFR 39.71(b), replace "§20.1003 of this chapter" with "N.J.A.C. 7:28-6";

13. 10 CFR 39.73(a), replace "19, 20, and 39" with "N.J.A.C. 7:28-6, 50 and 57";

14. 10 CFR 39.75(d), replace *"*§71.5" with "N.J.A.C. 7:28-61";

15. 10 CFR 39.75(e), add ", or NRC" after "Agreement State";

16. 10 CFR 39.77(a), replace "NRC Regional Office by telephone" with "Department by telephone as per N.J.A.C. 7:28-1.5";

17. 10 CFR 39.77(b), replace "§§20.2201-20.2202, §20.2203 and §30.50" with "N.J.A.C. 7:28-6 and N.J.A.C. 7:28-51"; and

18. 10 CFR 39.91, add "with the approval of the Commission on Radiation Protection," after "initiative," and replace "and will not endanger life or property or the common defense and security and are otherwise in the public interest" with "in accordance with the provisions of N.J.A.C. 7:28-2.8."

[(f)] ***(d)*** Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

[(g)] ***(e)*** Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 58. DOMESTIC LICENSING OF SOURCE MATERIAL

7:28-58.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 40, Domestic Licensing of Source Material.

(b) The following provisions of 10 CFR Part 40 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 40.2a, Coverage of inactive tailings sites;

2. 10 CFR 40.4, Definitions. The following definitions in 10 CFR 40.4 are not incorporated by reference: "Commission," "decommission," and "license";

3. 10 CFR 40.5, Communications;

4. 10 CFR 40.8, Information collection requirements: OMB approval;

5. 10 CFR 40.12(b), Carriers;

6. 10 CFR 40.20(b) and (c), Types of licenses;

7. 10 CFR 40.23, General license for carriers of transient shipments of natural uranium other than in the form of ore or ore residue;

8. 10 CFR 40.26, General license for possession and storage of byproduct material as defined in this part;

9. 10 CFR 40.27, General license for custody and long-term care of residual radioactive material disposal sites;

10. 10 CFR 40.28, General license for custody and long-term care of uranium or thorium byproduct materials disposal sites;

11. 10 CFR 40.31(c), (f) through (h), (j), (k), (l), Application for specific licenses;

12. 10 CFR Part 40.32(d), (e), (g), General requirements for issuance of specific licenses;

13. 10 CFR 40.33, Issuance of a license for a uranium enrichment facility;

14. 10 CFR 40.35(f), Conditions of specific licenses issued pursuant to §40.34;

15. 10 CFR 40.38, Ineligibility of certain applicants;

16. 10 CFR 40.41(d), (e)(1), (e)(3), and (g), Terms and conditions of licenses;

17. 10 CFR 40.51(b)(6), Transfer of source or byproduct material;

18. 10 CFR 40.64, Reports;

19. 10 CFR 40.65, Effluent monitoring reporting requirements;

20. 10 CFR 40.66, Requirements for advance notice of export shipments of natural uranium;

21. 10 CFR 40.67, Requirement for advance notice for importation of natural uranium from countries that are not party to the Convention on the Physical Protection of Nuclear Material; and

22. 10 CFR 40 Appendix A, Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material from Ores Processed Primarily for Their Source Material Content.

(c) The following provisions of 10 CFR Part 40 are incorporated by reference with the specified changes:

1. "Commission," "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 40 of the Code of Federal Regulations that are incorporated by reference, means the Department, except when specifically noted in this subchapter;

2. "Registrant" as used in the provisions of Part 40 of the Code of Federal Regulations that are incorporated by reference, means a "radioactive materials registrant" except when specifically noted;

3. 10 CFR 40.6, delete "Except as specifically authorized by the Commission in writing, no" with *"*No," and replace "by the General Counsel" with "signed and approved by the Commissioner of the Department,";

4. 10 CFR 40.9(b), replace "Administrator of the appropriate Regional Office" with "Department";

5. 10 CFR 40.14(a), replace "Commission" with "Department, with approval of the Commission on Radiation Protection," and replace "by law and will not endanger life or property or the common defense and security and are otherwise in the public interest" with "in accordance with the provisions of N.J.A.C. 7:28-2.8";

6. 10 CFR 40.21, delete "or byproduct material";

7. 10 CFR 40.22(b), replace "parts 19, 20, and 21, of this chapter" with "part 21 of this chapter and N.J.A.C. 7:28-6 and N.J.A.C. 7:28-50";

8. 10 CFR 40.25(c)(1), replace "NRC Form 244, "Registration Certificate--Use of Depleted Uranium Under General License" with "forms available from the Department";

9. 10 CFR 40.25(c)(2), replace "Director, Division of Industrial and Medical Nuclear Safety, with a copy to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D of part 20 of this chapter" with "Department";

10. 10 CFR 40.25(d)(4), replace "Director, Division of Industrial and Medical Nuclear Safety, with a copy to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D of part 20 of this chapter" with "Department";

11. 10 CFR 40.25(e), delete "parts 19, 20, and 21, of this chapter" with "part 21 of this chapter and N.J.A.C. 7:28-6 and N.J.A.C. 7:28-50";

12. 10 CFR 40.31(a), replace "NRC Form 313, 'Application for Material License,' in accordance with the instructions in §40.5 of this chapter" with "forms available from the Department";

13. 10 CFR 40.31(e), replace "§170.31" with "N.J.A.C. 7:28-64";

14. 10 CFR 40.34(a)(2), replace "§20.1201(a)" with "N.J.A.C. 7:28-6";

15. 10 CFR 40.25(c)(1), (c)(2), and (d)(3), add "or Department equivalent" after "'Registration Certificate-Use of Depleted Uranium Under General License,'";

16. 10 CFR 40.35(d)(1) and (d)(2), add "or Department equivalent" after "'Registration Certificate-Use of Depleted Uranium Under General License,'";

17. 10 CFR 40.35(e)(1), replace "Director, Office of Nuclear Material Safety and Safeguards" with "Department";

18. 10 CFR 40.31(c), replace "regulations contained in parts 2 and 9 of this chapter" with "the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.)";

19. 10 CFR 40.31(e), replace "part 170" with "Subchapter 64" and "§170.31" with "Subchapter 64";

20. 10 CFR 40.36(e)(2), replace "part 30" with "Subchapter 51";

21. 10 CFR 40.36(f)(3)(i), replace " 10 CFR 20.1003" with "N.J.A.C. 7:28-6";

22. 10 CFR 40.36(f)(3)(iii), replace " 10 CFR 20.2108" with "N.J.A.C. 7:28-6";

23. 10 CFR 40.36(f)(3)(iv), replace "10 CFR part 20, subpart E" with "N.J.A.C. 7:28-12" and replace " 10 CFR 20.2002" with "N.J.A.C. 7:28-6";

24. 10 CFR 40.41(c), replace "part 71" with "N.J.A.C. 7:28-61";

25. 10 CFR 40.41(f)(1), replace "appropriate NRC Regional Administrator" with "Department";

26. 10 CFR 40.42(j)(2), replace "10 CFR part 20, subpart E" with "N.J.A.C. 7:28-12";

27. 10 CFR 40.42(k)(3)(i), replace "10 CFR part 20, subpart E" with "N.J.A.C. 7:28-12";

28. 10 CFR 40.42(k)(3)(ii), replace "10 CFR part 20, subpart E" with "N.J.A.C. 7:28-12";

29. 10 CFR 40.43(a), add "or Department equivalent" after "NRC Form 313";

30. 10 CFR 40.44, add "or Department equivalent" after "NRC Form 313";

31. 10 CFR 40.60(b)(1)(ii), replace "appendix B of §§20.1001-20.2401 of 10 CFR part 20" with "N.J.A.C. 7:28-6";

32. 10 CFR 40.60(b)(4)(i), replace "appendix B of §§20.1001-20.2401 of 10 CFR part 20" with "N.J.A.C. 7:28-6";

33. 10 CFR 40.60(c)(2), replace "NRC's Document Control Desk" with "Department" and replace "appropriate NRC regional office listed in appendix D to part 20 of this chapter" with "Department";

34. 10 CFR 40.61(d)(1), replace "§20.2002, (including burials authorized before January 28, 1981), 20.2003, 20.2004, 20.2005" with "N.J.A.C. 7:28-6";

35. 10 CFR 40.61(d)(2), replace "§20.2103(b)(4)" with "N.J.A.C. 7:28-6";

36. 10 CFR 40.61(e)(1), replace "§20.2002, 20.2003, 20.2004, 20.2005" with "N.J.A.C. 7:28-6"; and

37. 10 CFR 40.61(e)(2), replace "§20.2103(b)(4)" with "N.J.A.C. 7:28-6."

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, "Notice to Employees" shall mean the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation," available from the Department via the Department's website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462.

(e) Those facilities which possess a license from the Department and the NRC for radioactive materials shall post both the NRC's Form 3, "Notice to Employees" and the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation."

(f) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(g) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 59. LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

7:28-59.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 61, Licensing Requirements for Land Disposal of Radioactive Waste.

(b) The following provisions of 10 CFR Part 61 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 61.4, Communications;

2. 10 CFR 61.8, Information collection requirements: OMB approval;

3. 10 CFR 61.16, Other information; and

4. 10 CFR 61.23(i) and (j), Standards for issuance of a license.

(c) The following provisions of 10 CFR Part 61 are incorporated by reference with the specified changes:

1. "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 61 of the Code of Federal Regulations, that are incorporated by reference, means the Department, except when specifically noted in this subchapter;

2. 10 CFR 61.1(a), replace "part 20 of this chapter" with "N.J.A.C. 7:28-6";

3. 10 CFR 61.1(b), replace "part 150 of this chapter" with "N.J.A.C. 7:28-62";

4. 10 CFR 61.1(b)(2), replace "part 40 of this chapter" with "N.J.A.C. 7:28-58";

5. 10 CFR 61.1(b)(3), replace "part 20 of this chapter" with "N.J.A.C. 7:28-6";

6. 10 CFR 61.5, delete "Except as specifically authorized by the Commission in writing, no" with "No," and replace "by the General Counsel" with "signed and approved by the Commissioner of the Department,";

7. 10 CFR 61.6, replace "Commission" with "Department, with approval of the Commission on Radiation Protection," and replace "by law and will not endanger life or property or the common defense and security and are otherwise in the public interest" with "in accordance with the provisions of N.J.A.C. 7:28-2.8";

8. 10 CFR 61.7(c)(4), replace "Department" with "Department of Energy";

9. 10 CFR 61.12(k), replace "part 20 of this chapter" with "N.J.A.C. 7:28-6";

10. 10 CFR 61.13(c), replace "part 20 of this chapter" with "N.J.A.C. 7:28-6";

11. 10 CFR 61.20(c), replace "part 170 of this chapter" with "N.J.A.C. 7:28-64";

12. 10 CFR 61.23(d), replace "part 20 of this chapter" with "N.J.A.C. 7:28-6";

13. 10 CFR 61.24(k)(1), replace "NRC Regional Administrator" with "Supervisor of the Radioactive Materials Section";

14. 10 CFR 61.43, replace "part 20 of this chapter" with "N.J.A.C. 7:28-6";

15. 10 CFR 61.52(a)(6), replace "§§20.1301 and 20.1302 of this chapter" with "N.J.A.C. 7:28-6";

16. 10 CFR 61.71, 10 CFR 61.72(a), 10 CFR 61.73(a), 10 CFR 61.73(b), and 10 CFR 61.73(c), replace "Director" with "Manager of the Bureau of Environmental Radiation";

17. 10 CFR 61.80(i)(1), delete "to the Director, Office of Federal and State Materials and Environmental Management Programs," and replace "with a copy to the appropriate NRC Regional Office shown in appendix D to part 20 of this chapter" with "to the Department";

18. 10 CFR 61.80(g), replace "§§30.55, 40.64" with "N.J.A.C. 7:28-51, N.J.A.C. 7:28-58 and §§";

19. 10 CFR 61.80(j), replace "§70.52 of this chapter" with "N.J.A.C. 7:28-60";

20. 10 CFR 61.80(k), replace "§§30.41, 40.51, and 70.42 of this chapter" with "N.J.A.C. 7:28-51, 58, and 60"; and

21. 10 CFR 61.80(l)(1)(i), replace "in 10 CFR part 20, appendix G" with "as is incorporated by reference in N.J.A.C. 7:28-6."

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, "Notice to Employees" shall mean the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation," available from the Department via the Department's website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462.

(e) Those facilities which possess a license from the Department and the NRC for radioactive materials shall post both the NRC's Form 3, "Notice to Employees" and the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation."

(f) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(g) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 60. DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7:28-60.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 70, Domestic Licensing of Special Nuclear Material.

(b) The following provisions of 10 CFR Part 70 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 70.1(c) through (e), Purpose;

2. 10 CFR 70.4, definition of "Commission";

3. 10 CFR 70.5, Communications;

4. 10 CFR 70.8, Information collection requirements: OMB approval;

5. 10 CFR 70.13, Department of Defense;

6. 10 CFR 70.14, Foreign military aircraft;

7. 10 CFR 70.20a, General license to possess special nuclear material for transport;

8. 10 CFR 70.20b, General license for carriers of transient shipments of formula quantities of strategic special nuclear material, special nuclear material of moderate strategic significance, special nuclear material of low strategic significance, and irradiated reactor fuel;

9. 10 CFR 70.21(a)1, (c), and (f) through (h), Filing;

10. 10 CFR 70.22(b), (c), and (f) through (n), Contents of application;

11. 10 CFR 70.23(a)(6) through (12), and (b), Requirements for the approval of applications;

12. 10 CFR 70.23a, Hearing required for uranium enrichment facility;

13. 10 CFR 70.24, Criticality accident requirements;

14. 10 CFR 70.25(a), Financial assurance and recordkeeping for decommissioning;

15. 10 CFR 70.31(c) through (e), Issuance of licenses;

16. 10 CFR 70.32(a)(1), (4) through (7), (b)(1), (3), (4), and (c) through (k), Conditions of licenses;

17. 10 CFR 70.37, Disclaimer of warranties;

18. 10 CFR 70.40, Ineligibility of certain applicants;

19. 10 CFR 70.42(b)(6), Transfer of special nuclear material;

20. 10 CFR 70.44, Creditor regulations;

21. 10 CFR 70.51(c), Records requirements;

22. 10 CFR 70.52, Reports of accidental criticality;

23. 10 CFR 70.55(c), Inspections;

24. 10 CFR 70.56(d), Tests;

25. 10 CFR 70.59, Effluent monitoring reporting requirements;

26. 10 CFR 70.60, Applicability;

27. 10 CFR 70.61, Performance requirements;

28. 10 CFR 70.62, Safety program and integrated safety analysis;

29. 10 CFR 70.64, Requirements for new facilities or new processes at existing facilities;

30. 10 CFR 70.65, Additional content of applications;

31. 10 CFR 70.66, Additional requirements for approval of license application;

32. 10 CFR 70.72, Facility changes and change process;

33. 10 CFR 70.74, Additional reporting requirements;

34. 10 CFR 70.76, Backfitting; and

35. 10 CFR 70.82, Suspension and operation in war or national emergency.

(c) The following provisions of 10 CFR Part 70 are incorporated by reference with the specified changes:

1. "Commission," "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 70 of the Code of Federal Regulations that are incorporated by reference, mean the Department;

2. 10 CFR 70.4, in definition of "person," replace "Department" with "Department of Energy";

3. 10 CFR 70.11, replace "Department" with "Department of Energy";

4. 10 CFR 70.17(a), replace "Commission" with "Department, with approval of the Commission on Radiation Protection," and replace "by law and will not endanger life or property or the common defense and security and are otherwise in the public interest" with "in compliance with N.J.A.C. 7:28-2.8";

5. 10 CFR 70.19(c), delete "20," and add "and N.J.A.C. 7:28-6";

6. 10 CFR 70.21(d), replace "regulations contained in part 2 of this chapter" with "Open Public Records Act (N.J.S.A. 47:1A-1 et seq.)";

7. 10 CFR 70.25(g)(3)(i), replace " 10 CFR 20.1003" with "N.J.A.C. 7:28-6";

8. 10 CFR 70.25(g)(3)(iii), replace " 10 CFR 20.2108" with "N.J.A.C. 7:28-6," replace "10 CFR part 20, subpart E" with "N.J.A.C. 7:28-12" and replace " 10 CFR 20.2002" with "N.J.A.C. 7:28-6";

9. 10 CFR 70.25(g)(3)(iv) replace "10 CFR part 20, subpart E" with "N.J.A.C. 7:28-12" and replace " 10 CFR 20.2002" with "N.J.A.C. 7:28-6";

10. 10 CFR 70.38(j)(2), replace "10 CFR part 20, subpart E" with "N.J.A.C. 7:28-12";

11. 10 CFR 70.38(k)(3)(i), replace "10 CFR part 20, subpart E" with "N.J.A.C. 7:28-12";

12. 10 CFR 70.38(k)(3)(ii), replace "10 CFR part 20, subpart E" with "N.J.A.C. 7:28-12";

13. 10 CFR 70.42(b)(1), replace "Department" with "Department of Energy";

14. 10 CFR 70.50(b)(1)(ii), replace "Appendix B of §§20.1001-20.2401 of 10 CFR part 20" with "N.J.A.C. 7:28-6";

15. 10 CFR 70.50(b)(4)(i), replace "appendix B of §§20.2001-20.2401 of 10 CFR part 20" with "N.J.A.C. 7:28-6";

16. 10 CFR 70.50(c)(2), delete "to the NRC's Document Control Desk," and replace "with a copy to the appropriate NRC regional office listed in appendix D to part 20 of this chapter" with "to the Department";

17. 10 CFR 70.51(a)(1), replace " 10 CFR 20.2002, (including burials authorized before January 28, 1981), 20.2003, 20.2004, 20.2005" with "N.J.A.C. 7:28-6";

18. 10 CFR 70.51(a)(2), replace " 10 CFR 20.2103(b)(4)" with "N.J.A.C. 7:28-6";

19. 10 CFR 70.51(b)(1), replace " 10 CFR 20.2002, (including burials authorized before January 28, 1981), 20.2003, 20.2004, 20.2005" with "N.J.A.C. 7:28-6";

20. 10 CFR 70.51(b)(2), replace " 10 CFR 20.2103(b)(4)" with "N.J.A.C. 7:28-6"; and

21. 10 CFR 70.56, replace "(b) facilities wherein special nuclear material is utilized, produced or stored," with "and."

(d) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(e) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 61. PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

7:28-61.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 71, Packaging and Transportation of Radioactive Material.

(b) The following provisions of 10 CFR Part 71 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference.

1. 10 CFR 71.6, Information collection requirements: OMB approval;

2. 10 CFR 71.10, Public inspection of application;

3. 10 CFR 71.14(b), Exemptions for low-level materials;

4. 10 CFR 71.19, Previously approved package;

5. 10 CFR 71.31, Contents of application;

6. 10 CFR 71.33, Package description;

7. 10 CFR 71.35, Package evaluation;

8. 10 CFR 71.37, Quality assurance;

9. 10 CFR 71.38, Renewal of a certificate of compliance or quality assurance program approval;

10. 10 CFR 71.39, Requirement for additional information;

11. 10 CFR 71.41, Demonstration of compliance;

12. 10 CFR 71.43, General standards for all packages;

13. 10 CFR 71.45, Lifting and tie-down standards for all packages;

14. 10 CFR 71.51, Additional requirements for Type B packages;

15. 10 CFR 71.55, General requirements for fissile material packages;

16. 10 CFR 71.59, Standards for arrays of fissile material packages;

17. 10 CFR 71.61, Special requirements for Type B packages containing more than 10<5>A[2];

18. 10 CFR 71.63, Special requirement for plutonium shipments;

19. 10 CFR 71.64, Special requirements for plutonium air shipments;

20. 10 CFR 71.65, Additional requirements;

21. 10 CFR 71.71, Normal conditions of transport;

22. 10 CFR 71.73, Hypothetical accident conditions;

23. 10 CFR 71.74, Accident conditions for air transport of plutonium;

24. 10 CFR 71.75, Qualification of special form radioactive material;

25. 10 CFR 71.77, Qualification of LSA-III Material;

26. 10 CFR 71.101(c)(2), (d) through (e), Quality assurance requirements;

27. 10 CFR 71.107, Package design control;

28. 10 CFR 71.109, Procurement document control;

29. 10 CFR 71.111, Instructions, procedures and drawings;

30. 10 CFR 71.113, Document control;

31. 10 CFR 71.115, Control of purchased material, equipment and services;

32. 10 CFR 71.117, Identification and control of materials, parts and components;

33. 10 CFR 71.119, Control of special processes;

34. 10 CFR 71.121, Internal inspection;

35. 10 CFR 71.123, Test control; and

36. 10 CFR 71.125, Control of measuring and test equipment.

(c) The following provisions of 10 CFR 71 are incorporated by reference with the specified changes:

1. "Commission," "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 71 of the Code of Federal Regulations that are incorporated by reference, means the Department, except at:

i. 10 CFR 71.0(a)2 and (d)1;

ii. 10 CFR 71.4, definitions for "Certificate Holder," "Certificate of Compliance(CoC)" and "Package (3) Type B Package";

iii. 10 CFR 71.85(c), Preliminary determinations;

iv. 10 CFR 71.88(a)4, Air transport of plutonium;

v. 10 CFR 71.93(c), Inspections and tests;

vi. 10 CFR 71.95(a)(1) and (a)(2);

vii. 10 CFR 71.97(c)(1), (c)(3)(iii), and (f), Advance notification of shipment of irradiated reactor fuel and nuclear waste; and

viii. 10 CFR 71.101(f), Quality assurance requirements;

2. 10 CFR 71.0(b), replace "parts of this chapter (e.g., 10 CFR parts 20, 21, 30, 40, 70 and 73)," with "State Regulations (e.g. N.J.A.C. 7:28-6, 51, 58, and 60)" and add "U.S. Nuclear Regulatory Commission (NRC)" into the list of other agencies;

3. 10 CFR 71.1(a), replace rule text with "Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent to the Department as specified in N.J.A.C. 7:28-1.5.";

4. 10 CFR 71.2, delete "Except as specifically authorized by the Commission in writing, no" with "No," and replace "by the General Counsel" with "signed and approved by the Commissioner of the Department,";

5. 10 CFR 71.5(b), replace "Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555-0001" with "the Department in accordance with N.J.A.C. 7:28-1.5";

6. 10 CFR 71.7(b), replace "Administrator of the appropriate Regional Office" with "Department";

7. 10 CFR 71.9(c), replace "Commission licensee, certificate holder, applicant for a Commission license or a CoC" with "Department licensee, NRC certificate holder, applicant for a Department license or NRC CoC";

8. 10 CFR 71.9(e)(1), replace "Each licensee, certificate holder, and applicant for a license or CoC must prominently post the current revision of NRC Form 3, 'Notice to Employees,' referenced in §19.11(c) of this chapter" with "Each licensee, certificate holder, and applicant for a license or CoC must prominently post the current revision of Department Form RPP-14, 'Notice to Employees, Standards for Protection Against Radiation,' referenced in Subchapter 50";

9. 10 CFR 71.9(e)2, replace with "Copies of Department Form RPP-14 may be obtained from the Department in accordance with N.J.A.C. 7:28-1.5.";

10. 10 CFR 71.12, replace "Commission" with "Department, with approval of the Commission on Radiation Protection," and replace "by law and will not endanger life or property nor the common defense and security *[and security]*" with "in accordance with the provisions of N.J.A.C. 7:28-2.8";

11. 10 CFR 71.13, replace "10 CFR part 35" with "N.J.A.C. 7:28-55";

12. 10 CFR 71.47(b)(4), replace " 10 CFR 20.1502" with "N.J.A.C. 7:28-6";

13. 10 CFR 71.89, replace " 10 CFR 20.1906" with "N.J.A.C. 7:28-6";

14. 10 CFR 71.95(c), replace "§71.1(a)" with " N.J.A.C. 7:28-1.5" and replace "to: ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards" with "to the Department";

15. 10 CFR 71.101(c)1, replace "§71.1(a)" with " N.J.A.C. 7:28-1.5" and replace "to: ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards" with "to the Department"; and

16. 10 CFR 71.101(f), replace "NRC, in accordance with §71.1" with "Department, in accordance with N.J.A.C. 7:28-1.5."

(d) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(e) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 62. EXEMPTIONS AND CONTINUED NRC REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274 (42 U.S.C. §2021)

7:28-62.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 150, Exemptions and Continued Regulatory Authority in Agreement States and in offshore waters under Section 274 [42 U.S.C. §2021].

(b) The following provisions of 10 CFR Part 150 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 150.3, Definition of "Commission";

2. 10 CFR 150.4, Communications;

3. 10 CFR 150.7, Persons in offshore waters not exempt;

4. 10 CFR 150.8, Information collection requirements: OMB approval;

5. 10 CFR 150.10, Persons exempt;

6. 10 CFR 150.14, Commission regulatory authority for physical protection;

7. 10 CFR 150.15, Persons not exempt;

8. 10 CFR Part 150.15a, Continued Commission authority pertaining to byproduct material;

9. 10 CFR Part 150.16, Submission to Commission of nuclear material transfer reports;

10. 10 CFR Part 150.17, Submission to Commission of source material reports;

11. 10 CFR Part 150.17a, Compliance with requirements of US/IAEA safeguards agreement;

12. 10 CFR Part 150.19, Submission to Commission of tritium reports;

13. 10 CFR Part 150.21, Transportation of special nuclear material by aircraft;

14. 10 CFR 150.31, Requirements for Agreement State regulation of byproduct material; and

15. 10 CFR 150.32, Funds for reclamation or maintenance of byproduct material.

(c) The following provisions of 10 CFR Part 150 are incorporated by reference with the specified changes:

1. "Commission," "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 150 of the Code of Federal Regulations that are incorporated by reference, mean the Department; and

2. 10 CFR 150.20(b), references to specific sections of 10 CFR part 30, refer to N.J.A.C. 7:28-51, sections of 10 CFR part 40, refer to N.J.A.C. 7:28-58, and sections of 10 CFR part 70, refer to N.J.A.C. 7:28-60. Replace "parts 19, 20, and 71" with "N.J.A.C. 7:28-6, 50, and 61", and replace "part 34" with "N.J.A.C. 7:28-63."

(d) The incorporation by reference of 10 CFR 150.20(b) shall not include the ability to issue general licenses to operate in areas of exclusive Federal jurisdiction and offshore waters, but only to Agreement State and NRC licensees that wish to operate within New Jersey's jurisdiction in accordance with N.J.A.C. 7:28-50.1(d).

(e) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(f) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 63. LICENSES FOR INDUSTRIAL RADIOGRAPHY USING SEALED SOURCES AND RADIATION SAFETY REQUIREMENTS FOR SUCH INDUSTRIAL RADIOGRAPHIC OPERATIONS

7:28-63.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 34, Licenses for Industrial Radiography Using Sealed Sources and Radiation Safety Requirements for Such Industrial Radiographic Operations.

(b) The following provisions of 10 CFR Part 34 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 34.8, Information collection requirements: OMB approval.

(c) The following provisions of 10 CFR Part 34 are incorporated by reference with the specified changes:

1. "Commission," "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 34 of the Code of Federal Regulations that are incorporated by reference, mean the Department, except in 10 CFR 34.41(c), and 34.27(a) and (c)(1);

2. 10 CFR 34.1, replace "parts 19, 20, 21, 30, 71, 150, 170, and 171" with "10 CFR Part 21 and N.J.A.C. 7:28-6, 50, 51, 61, 62 and 64";

3. 10 CFR 34.11, replace "on NRC Form 313, 'Application for Material License,' in accordance with the provisions of §30.32 of this chapter," with "an original application for a specific State license";

4. 10 CFR 34.13(a), replace "§30.33 of this chapter" with "N.J.A.C. 7:28-51";

5. 10 CFR 34.25(a), replace "10 CFR part 20" with "N.J.A.C. 7:28-6";

6. 10 CFR 34.27(d), replace "Director of Nuclear Material Safety and Safeguards" with "Manager, Bureau of Environmental Radiation";

7. 10 CFR 34.27(d), replace "Administrator of the appropriate Nuclear Regulatory Commission's Regional Office listed in appendix D of 10 CFR part 20 of this chapter 'Standards for Protection Against Radiation'" with "Manager, Bureau of Environmental Radiation";

8. 10 CFR 34.33(a)(1), replace "§20.1601(a)(1) of this chapter" with "N.J.A.C. 7:28-6";

9. 10 CFR 34.35(b), replace "10 CFR part 71" with "N.J.A.C. 7:28-61";

10. 10 CFR 34.42(c)(1), replace "10 CFR part 20 of this chapter" and "10 CFR part 20" with "N.J.A.C. 7:28-6" in both instances;

11. 10 CFR 34.42(c)(4), replace "§20.2203 of this chapter" with "N.J.A.C. 7:28-6";

12. 10 CFR 34.43(a)(1), replace "Director, Office of Nuclear Material Safety and Safeguards, by an appropriate method listed in §30.6(a)" with "Manager, Bureau of Environmental Radiation, by an appropriate method listed in N.J.A.C. 7:28-51";

13. 10 CFR 34.43(b)(1), replace "in §§30.7, 30.9, and 30.10" with "N.J.A.C. 7:28-51", replace "10 CFR parts 19 and 20" with "N.J.A.C. 7:28-6 and 50", and replace "10 CFR 71" with "N.J.A.C. 7:28-61";

14. 10 CFR 34.43(c)(1), replace "in §§30.7, 30.9, and 30.10" with "N.J.A.C. 7:28-51", replace "10 CFR parts 19 and 20" with "N.J.A.C. 7:28-6 and 50", and replace "10 CFR part 71" with "N.J.A.C. 7:28-61";

15. 10 CFR 34.45(a)(1), replace "10 CFR part 20" with "N.J.A.C. 7:28-6";

16. 10 CFR 34.51, replace "10 CFR part 20" with "N.J.A.C. 7:28-6";

17. 10 CFR 34.53, replace "§20.1902" with "N.J.A.C. 7:28-6" and replace "§20.1903" with "N.J.A.C. 7:28-6";

18. 10 CFR 34.89(b)(2), replace "19, 20," with "and N.J.A.C. 7:28-6, 50, and 63";

19. 10 CFR 34.89(b)(11), replace "§71.5" with "N.J.A.C. 7:28-61";

20. 10 CFR 34.89(b)(12), and replace "§150.20" with "N.J.A.C. 7:28-62";

21. 10 CFR 34.101(a), replace "§30.50 and under other sections of this chapter, such as §21.21, each licensee shall send a written report to the NRC's Office of Nuclear Material Safety and Safeguards, Division of Industrial and Medical Nuclear Safety, by an appropriate method listed in §30.6(a) of this chapter" with "N.J.A.C. 7:28-51 and under other sections of this subchapter or Federal rule such as 10 CFR §21.21, each licensee shall send a written report to the Manager, Bureau of Environmental Radiation, by an appropriate method listed in N.J.A.C. 7:28-51";

22. 10 CFR 34.101(b), replace " 10 CFR 20.2203" with "N.J.A.C. 7:28-6";

23. 10 CFR 34.101(c), replace "appropriate NRC regional office listed in §30.6(a)(2) of this chapter" with "Department"; and

[22.] ***24.***. 10 CFR 34.111, replace "Commission" with "Department, with approval of the Commission on Radiation Protection," and replace "by law and will not endanger life or property or the common defense and security and are otherwise in the public interest" with "in accordance with the provisions of N.J.A.C. 7:28-2.8."

(d) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

[(f)] ***(e)*** Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

SUBCHAPTER 64. RADIOACTIVE MATERIALS LICENSE FEES

7:28-64.1 Purpose and applicability

(a) This subchapter establishes fees for registration and licensing of radioactive materials. Annual license fees for radioactive materials are set forth in Tables 1 and 2 at N.J.A.C. 7:28-64.2.

(b) Fees will be effective on the (the operative date of the rules).

(c) Fees for NRC licenses that are transferred to New Jersey will be prorated to (July of the year following the operative date of these rules), when the Department will again issue invoices for annual fees.

7:28-64.2 Schedule of fees

(a) Except as set forth in (b) and (c) below, this section incorporates by reference the table in 10 CFR 171.16 entitled "Schedule of materials annual fees and fees for government agencies licensed by NRC."

(b) The Department does not regulate nuclear reactors, special nuclear materials in quantities sufficient to form a critical mass, high-level waste disposal facilities, or byproduct material defined in Section 11e(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. §2014).

(c) Insofar as the incorporated rules refer to the facilities and/or materials in (b) above, they do not apply. The following provisions of the table identified in (a) above are incorporated by reference with the specified changes:

1. Delete column 2, labeled "Annual fees";

2. Delete row labeled 2.A.(5);

3. Row labeled 3.A, replace "parts 30 and 33 of this chapter" with "N.J.A.C. 7:28-51 and 54";

4. Row labeled 3.C., replace "§§32.72 and/or 32.74 of this chapter" with "N.J.A.C. 7:28-53";

5. Row labeled 3.C., delete "This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 171.11(a)(1). The licenses are covered by fee under Category 3.D.";

6. Row labeled 3.J., replace "Subpart B of part 32 of this chapter" with "N.J.A.C. 7:28-53," and replace "part 31 of this chapter" with "N.J.A.C. 7:28-52";

7. Row labeled 3.K, replace "Subpart B of part 32 of this chapter" with "N.J.A.C. 7:28-53," and replace "part 31 of this chapter" with "N.J.A.C. 7:28-52";

8. Row labeled 3.L., replace "parts 30 and 33 of this chapter" with "N.J.A.C. 7:28-51 and 54";

9. Row labeled 3.M., replace "part 30 of this chapter" with "N.J.A.C. 7:28-51";

10. Row labeled 3.O., replace "part 40 of this chapter" with "N.J.A.C. 7:28-58";

11. Row labeled 3.R., replace " 10 CFR 31.12" with "N.J.A.C. 7:28-52";

12. Row labeled 3.R.2., replace " 10 CFR 31.12(a)(4), or (5)" with "N.J.A.C. 7:28-52";

13. Row labeled 7.A., replace "parts 30, 35, 40, and 70 of this chapter" with "N.J.A.C. 7:28-51, 55, 58, and 60";

14. Row labeled 7.B., replace "parts 30, 33, 35, 40, and 70" with "N.J.A.C. 7:28-51, 54, 55, 58, and 60";

15. Row labeled 7.C., replace "parts 30, 35, 40, and 70 of this chapter" with "N.J.A.C. 7:28-51, 55, 58, and 60"; and

16. Row labeled 14.A., replace "parts 30, 40, 70, 72, and 76 of this chapter" with "N.J.A.C. 7:28-51, 58, and 60."

(d) Fees for source, byproduct, and certain special nuclear materials are established in Table 1, Schedule of Source, Special Nuclear, and Byproduct Material Annual Fees, and are matched to the NRC categories, incorporated by reference in (a) and (b) above.

(e) Other specified fees, including fees for diffuse NARM, are established in Table 2, Schedule of Radioactive Materials Annual Fees.

(f) If, by amendment or otherwise, a license changes to another fee category, the fee for the new category will take effect on the anniversary date of the license.

(g) The fee for any category for which a fee is not provided at Table 1 below shall be calculated in accordance with N.J.A.C. 7:28-64.3(c) and 64.4(e).

Table 1

Schedule of Source, Special Nuclear, and Byproduct Material Annual Fees

FEE CATEGORY	LICENSE TYPE	ANNUAL FEE ($)
1.	Special Nuclear Material	
A.-C.	(Reserved.)	
D.	All other special nuclear material except a) licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in N.J.A.C. 7:28-62; b) U-235 or plutonium for fuel	4,275

	fabrication activities; c) spent fuel and reactor-related greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI); d) special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers; or e) licenses or certificates for the operation of a uranium enrichment facility.	
E.	(Reserved.)	
2.	Source Material	
A.	(Reserved.)	
B.	Licenses that authorize only the possession, use and/or installation of source material for shielding.	575
C.	All other source material licenses	9,825
3.	Byproduct material	
A.	Licenses of broad scope for possession and use of byproduct material issued under N.J.A.C. 7:28-51 and 54 for processing or manufacturing of items containing byproduct material for commercial distribution.	21,600
B.	Other licenses for possession and use of byproduct material issued under N.J.A.C. 7:28-51 for processing or manufacturing of items containing byproduct material for commercial distribution. This category also includes licenses for repair, assembly, and disassembly of products containing radium-226.	6,225
C.	Licenses issued under N.J.A.C. 7:28-53 authorizing the	8,850

	processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under N.J.A.C. 7:28-58 when included on the same license.	
D.	(Reserved.)	
E.	Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	3,000
F.	Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes.	5,850
G.	Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes.	23,100
H.-I.	(Reserved.)	
J.	Licenses issued under N.J.A.C.	1,800

	7:28-53 to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under N.J.A.C. 7:28-52, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under N.J.A.C. 7:28-52.	
K.	Licenses issued under N.J.A.C. 7:28-53 to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under N.J.A.C. 7:28-52, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under N.J.A.C. 7:28-52.	1,350
L.	Licenses of broad scope for possession and use of byproduct material issued under N.J.A.C. 7:28-51 and 54 for research and development that do not authorize commercial distribution.	11,000
M.	Other licenses for possession and use of byproduct material issued under N.J.A.C. 7:28-51 for research and development that do not authorize commercial distribution.	4,200
N.	Licenses that authorize services for other licensees, except: Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.	6,225
O.	Licenses for possession and use of byproduct material	10,575

	issued under N.J.A.C. 7:28-63 for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under N.J.A.C. 7:28-58 when authorized on the same license.	
P.	All other specific byproduct material licenses, except those in Categories 4.A through 9.D.	2,025
Q.	(Reserved.)	
R.	Possession of items or products containing radium-226 identified in N.J.A.C. 7:28-52 which exceed the number of items or limits specified in that section. (Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. This exception does not apply if the radium sources are possessed for storage only.)	
1.	Possession of quantities exceeding the number of items or limits in N.J.A.C. 7:28-52, but less than or equal to 10 times the number of items or limits specified.	1,575
2.	Possession of quantities exceeding 10 times the number of items or limits specified in N.J.A.C. 7:28-52.	2,025
S.	Licenses for production of accelerator-produced radionuclides.	8,100
4.	Waste Processing	
A.-C.	(Reserved.)	
5.	Well Logging	

A.	Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.	3,225
B.	(Reserved.)	
6.	Nuclear Laundry	
A.	(Reserved.)	
7.	Medical	
A.	Licenses issued under N.J.A.C. 7:28-51, 55, 58 and 60 for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.	10,125
B.	Licenses of broad scope issued to medical institutions or two or more physicians under N.J.A.C. 7:28-51, 55, 58 and 60 authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. Separate fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Category 7.B. or 7.C.	21,615
C.	Other licenses issued under	3,600

	N.J.A.C. 7:28-51, 55, 58 and 60 for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license*.* Separate fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Category 7.B. or 7.C.	
8.-13.	(Reserved.)	
14.	Decommissioning/Reclamation	
A.	Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under N.J.A.C. 7:28-51, 58 and 60.	Full Cost
B.	Site-specific decommissioning activities associated with unlicensed sites, whether or not the sites have been previously licensed.	Full Cost
15.	(Reserved.)	
16.	Reciprocity	
	Reciprocal recognition of an out-of-state license for a period of less than 180 days.	50 percent of annual fee of applicable category
17.-18.	(Reserved.)	

Table 2

Schedule of Radioactive Materials Annual Fees

FEE CATEGORY	LICENSE TYPE	ANNUAL FEE ($)
1.	Water Treatment Facilities as defined in N.J.A.C. 7:10-3.6	
A.	Very Small Community Water Systems	$ 300
B.	Small Community Water Systems	$ 875
C.	Medium Community Water Systems	$ 1,250
D.	Large Community Water Systems	$ 2,500
E.	Non-Transient Non-Community Water Systems treating equal to or less than 1,000 gallons per day	$ 200
F.	Non-Transient Non-Community Water Systems treating more than 1,000 gallons per day	$ 500
2.	Amendments	
A.	Request to amend a license requiring no license review including, but not limited to, facility name change or removal of a previously authorized user.	$ 0
B.	Request to amend a license requiring review including, but not limited to, addition of isotopes, procedure changes, new authorized users, or a new radiation safety officer.	$ 200
C.	Request to amend a license requiring review and a site visit, but not limited to, facility move or addition of a process.	$ 400
3.	Inspections	
A.	Routine	$ 0
B.	Non-routine Reinspection	Full Cost
C.	Pre-licensing	$ 400

D.	Reciprocity	$ 400
E.	Inspection as a result of an incident	Full Cost
4.	Additional Use Sites (Non-contiguous)	
A.	Non-profit educational institutions	25 percent of appropriate fee
B.	Medical Private Practices	50 percent of appropriate fee
5.	Generally Licensed Devices	$ 350
6.	Diffuse NARM License	$ 2,500

7:28-64.3 Application fee

(a) An initial application for a license shall be accompanied by payment in the full amount of the fee specified in Tables 1 and 2 at N.J.A.C. 7:28-64.2.

(b) The Department may not process the application prior to the receipt of the required fee. The application fee is not refundable except in those cases where the Department determines that a license is not required.

(c) A license covering more than one of the categories in Tables 1 and 2 at N.J.A.C. 7:28-64.2 shall be accompanied by the prescribed fee for each category applicable to the license.

(d) The application fee for a category of NRC license that is not included in Table 1 at N.J.A.C. 7:28-64.2 shall be calculated as follows: NJ Fee = 0.75 (NRC Annual fee + 0.1 NRC application fee). NRC fees are established in 10 CFR Parts 170 and 171. The Department incorporates by reference the fee provisions of 10 CFR Parts 170 and 171, for purposes of calculating fees pursuant to this subsection.

7:28-64.4 Annual fee

(a) The annual fee is not refundable except in those cases where the Department determines that the fee is not required.

(b) Fees are payable 30 days after the date of the invoice.

(c) A license covering more than one of the categories in Tables 1 and 2 at N.J.A.C. 7:28-64.2 shall be invoiced for the prescribed fee for each category applicable to the license.

(d) The annual fee for a category of NRC license that is not included in Tables 1 and 2 at N.J.A.C. 7:28-64.2 shall be calculated as follows: NJ Fee = 0.75 (NRC Annual fee + 0.1 NRC application fee). NRC fees are established in 10 CFR Part 170 and 171. The Department incorporates by reference the fee provisions of 10 CFR Parts 170 and 171, for purposes of calculating fees pursuant to this subsection.

(e) No refund of a fee will be provided if a license is terminated.

7:28-64.5 Inspections

(a) The Department shall make periodic inspections of licensees.

(b) If the Department finds a violation that could have implications regarding worker or public dose limits at N.J.A.C. 7:28-6 during an inspection, the licensee must pay all Department costs associated with subsequent reinspection of the licensee. The costs shall be the actual costs incurred by the Department and include, but not limited to, labor, transportation, per diem, materials, legal fees, and monitoring costs.

7:28-64.6 Reciprocity fees

(a) A licensee submitting an application for reciprocal recognition of a materials license issued by another Agreement State or the NRC for a period of 180 days or less during a calendar year must pay one-half of the fee specified under Tables 1 and 2 at N.J.A.C. 7:28-64.2.

(b) The Department will not process the application for reciprocity prior to the receipt of the required fee.

7:28-64.7 Fees for licensees with additional use sites

(a) The Department will consider sites that are not contiguous or adjacent as additional use sites for non-profit educational institutions provided that:

1. The sites are operated by the same person;

2. The sites are in the same license category or categories;

3. The applicant for a license provides for one radiation safety officer, and if applicable, one radiation safety committee, as responsible for all sites; and

4. The Department is reasonably satisfied from the information provided in the application that the applicant will adequately control radioactive material at all sites listed in the application.

(b) Each additional use site as defined (a) above shall be charged 25 percent of the applicable fee for each applicable category.

(c) The Department will consider sites that are not contiguous or adjacent as additional use sites for private medical practices, provided that:

1. The sites are operated by the same person;

2. The sites are in the same license category or categories;

3. The applicant for a license provides for one radiation safety officer, and if applicable, one radiation safety committee, as responsible for all sites;

4. The Department is reasonably satisfied from the information provided in the application that the applicant will adequately control radioactive material at all sites listed in the application; and

5. There shall be no more than three additional use sites per license.

(d) Each additional use site as defined (c) above shall be charged 50 percent of the applicable fee for each applicable category.

7:28-64.8 Fees for license amendments

[An application for] ***A letter requesting*** an amendment to a specific license shall be accompanied by payment in full of the fee specified in Table 2 at N.J.A.C. 7:28-64.2.

7:28-64.9 Failure to pay prescribed fees

(a) The Department will not process any application unless the licensee pays, on or before the due date, the fee prescribed by this subchapter.

(b) If the Department finds that a licensee has not paid a renewal fee prescribed by this section by the due date, the Department will take the appropriate enforcement action.

7:28-64.10 Annual adjustment of fees

(a) Each year the annual fees in Tables 1 and 2 in N.J.A.C. 7:28-64.2 will be adjusted by the previous 12-month inflation factor. The inflation factor is calculated from the Consumer Price Index, all urban consumers, U.S. city average (CPI-U), published monthly by the U.S. Department of Labor, Bureau of Labor Statistics. The CPI-U for purposes of calculating the inflation factor shall be the CPI-U for the 12-month period ending May 31.

(b) The inflation factor shall be the past year percent change for the United States city average, all items, all urban consumers.

(c) If the inflation factor for a 12-month period is negative, the fees will remain unchanged from the previous year.

(d) The adjusted fees shall be reflected through a notice of administrative change, published in the New Jersey Register; however, the adjusted fees shall be effective on July 1, whether or not a notice of administrative change has been published.

POLICY ISSUE
(Notation Vote)

April 23, 2009 SECY-09-0065

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: PROPOSED AGREEMENT BETWEEN THE STATE OF NEW JERSEY AND THE COMMISSION PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

PURPOSE:

To request Commission approval to publish the proposed Agreement with the State of New Jersey (State or New Jersey) and a summary of the draft U.S. Nuclear Regulatory Commission (NRC) staff assessment of the State's regulatory program in the *Federal Register* (*FR*) for public comment.

BACKGROUND:

Section 274b of the Atomic Energy Act of 1954, as amended (Act) authorizes the Commission to enter into an Agreement with the Governor of a State providing for the discontinuance of the regulatory authority of the Commission with respect to certain materials. In 1981, the Commission adopted the revised policy statement entitled, "Criteria for Guidance of States and Nuclear Regulatory Commission (NRC) in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (46 FR 7540; January 23, 1981), as amended by statements published on July 16, 1981 (46 FR 36969), and on July 21, 1983 (48 FR 33376), referred to hereafter as the "policy statement." The Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700, "Processing an Agreement," was subsequently adopted for applying the policy statement to the processing of a new Agreement. The criteria and approaches in these documents form the basis for the staff's evaluation of the State's request.

CONTACT: Torre Taylor, FSME/MSSA
301-415-7900

SECY NOTE: THIS SECY PAPER TO RELEASED TO THE PUBLIC 5 WORKING DAYS AFTER PUBLICATION O FEDERAL REGISTER NOTICE

DISCUSSION:

By letter dated October 16, 2008, Governor Jon S. Corzine requested that the Commission enter into an Agreement with the State under Section 274b of the Act. The Governor requested that the Commission discontinue its regulatory authority for 11e.(1); 11e.(3); and 11e.(4) byproduct materials, source materials, special nuclear materials in quantities not sufficient to form a critical mass; and land disposal of byproduct, source, or special nuclear waste materials received from other persons, and to allow New Jersey to assume regulatory authority for such material under the Agreement.

Governor Corzine certified that the State has a program for the control of radiation hazards that is adequate to protect public health and safety within the State with respect to the materials covered by the proposed Agreement. The Governor further certified that the State wishes to assume the regulatory responsibility for those materials. Copies of Governor Corzine's letter and Chairman Klein's response are enclosed (Enclosures 1 and 2, respectively).

The State proposed an effective date of the Agreement of no later than September 30, 2009. Following the public comment period and the resolution of public comments, the NRC staff will be in a better position to make a recommendation regarding the proposed Agreement. The NRC staff will include an updated schedule (including a revised effective date for the Agreement, if appropriate), along with an analysis of the public comments, as part of the final paper to the Commission with the staff's recommendations regarding the New Jersey Agreement request.

As required by Section 274e of the Act, the NRC staff will publish the proposed Agreement for comment in the FR once each week for four consecutive weeks. The FR Notice (Enclosure 3) will include a summary of the staff's draft assessment (Enclosure 4) of the proposed New Jersey regulatory program for regulation of 11e.(1); 11e.(3); and 11e.(4) byproduct materials, source materials, special nuclear materials in quantities not sufficient to form a critical mass; and land disposal of byproduct, source, or special nuclear waste materials received from other persons, in addition to the text of the proposed Agreement. The staff plans to follow the same process for New Jersey as it did for recently approved Agreements, such as Virginia and Pennsylvania. For those Agreements, the NRC staff published the proposed Agreements in the FR for public comment, in parallel with the Commission's review of the staff's draft assessment. If the Commission approves, the final Agreement will be published in the FR within 30 days after signature by the Chairman and the Governor.

The NRC staff's draft assessment of the State's program covered seven subjects: objectives, radiation protection standards, prior evaluation of uses of radioactive material, inspection, enforcement, personnel, and administration. The NRC staff has concluded that the State, as defined by these subjects, is compatible with the program of the NRC and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

If the proposed Agreement is approved, NRC would transfer approximately 500 specific licenses currently administered by Region I to the State's jurisdiction. The State already has approximately 500 naturally-occurring and accelerator-produced radioactive materials (NARM) licenses. After combining the common licenses, there will be approximately 700 New Jersey specific licenses in total. New Jersey assesses fees on its licensees. The fees will be a

dedicated fund to the Agreement State program, and, at this time, the fees are sufficient to fund the Agreement State program.

Waiver Termination for NARM Materials

The Energy Policy Act of 2005 (EPAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and 11e.(4) of the Act, to include certain NARM materials. Section 651(e) of the EPAct authorized the NRC to issue a time-limited waiver to allow continued use and possession of NARM while the Commission developed a regulatory framework for the regulation of this byproduct material. A waiver was issued on August 31, 2005 (70 FR 51581), and is effective through August 7, 2009. A plan to facilitate an orderly transition of regulatory authority with respect to the NARM material defined in Sections 11e.(3) and 11e.(4) was noticed in the *Federal Register* on October 19, 2007 (72 FR 59158).

New Jersey has been regulating the uses of NARM prior to the EPAct, and continues to do so under the time-limited waiver. The State has proposed an effective date for the Agreement of no later than September 30, 2009. If the proposed Agreement is approved before August 7, 2009, the Commission would terminate the time-limited waiver in the State coincident with the effective date of the Agreement. However, if the Agreement is not approved prior to this date, NRC would have jurisdictional authority over all uses of byproduct material within the State. These licensees would have to meet NRC regulatory requirements and would have: (a) 6 months to apply for any necessary amendments to an NRC license they already possess, or (b) 12 months to apply for a new NRC license, if needed.

With the effective date of the New Jersey Agreement having the potential to occur after the expiration of the time-limited waiver, staff is working with New Jersey to ensure an efficient transition of NARM licensees in the State within the legal requirements. The staff's objective is to minimize the impact to NARM licensees in New Jersey during the transition to NRC and then back to New Jersey's regulatory authority, within a short time frame (i.e., about seven weeks).

Resolution of Apparent Differences in the Standard Agreement

In Staff Requirements Memorandum, SECY-08-0154, "Proposed Agreement Between the Commonwealth of Virginia and the Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended," dated November 5, 2008, the Commission directed the staff to include, as part of the New Jersey Agreement evaluation, its evaluation and recommendations for resolution of the apparent differences of the standard Agreement between a State and the NRC providing for discontinuance of the NRC's regulatory program in relation to Section 274c of the Atomic Energy Act and 10 CFR 150.15(a)(6).

The issue in question is the language in Article IV of the standard Agreement versus Section 274c of the Act and the requirements in 10 CFR 150.15(a)(6). Section 274c lists those areas for which the Commission will retain authority and responsibility. Within this Section is a condition that states that the Commission is authorized to limit manufacturers, processors, or producers of products containing source, byproduct, or special nuclear material from transferring such products except pursuant to a license issued by the Commission. The Commission implements this Section of the Act by regulation in 10 CFR 150.15(a)(6), with the only limitation being the distribution of products to persons exempt from regulatory requirements.

After further evaluation, the staff determined that the standard Agreement should include only those areas of authority for which the Commission shall retain authority and responsibility, as specified in Section 274c of the Act. Articles II and IV of the standard Agreement are the provisions for this Section of the Act. The staff has concluded that the language in the standard Agreement is consistent with Section 274c and that no changes are necessary to the language of the existing standard Agreement. In the future, the Commission could choose to further regulate the distribution of products containing source, byproduct, or special nuclear materials in Agreement States beyond that currently in 10 CFR 150.15(a)(6). Article IV correctly notes that the Commission retains the option to issue further requirements.

RESOURCES:

The State has requested a proposed effective date for the Agreement of no later than September 30, 2009. NRC Region I has adequate resources budgeted within the Materials Users subprogram (Materials Licensing and Materials Inspection planned activities) to perform materials licensing, inspection, decommissioning, enforcement, allegation casework and transition activities related to the State during Fiscal Year (FY) 2009. The FY 2010 proposed budget does not include resources for these activities in New Jersey.

CONCLUSION:

The NRC staff concludes that, based on the draft assessment, the State satisfies the criteria in the Commission's policy statement, and; therefore, would meet the requirements of Section 274 of the Act. The proposed State program to regulate Agreement materials, as comprised of statutes, regulations, and procedures, is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

COMMITMENTS:

Listed below are the actions or activities committed to by the staff in this paper.

1. The staff will provide an updated schedule and an analysis of public comments along with the final paper to the Commission, providing a recommendation on the proposed Agreement.

RECOMMENDATIONS:

That the Commission:

1. Approve:

   Publication of the *FR* Notice once each week for four consecutive weeks, as required by the Act.

2. Review:

The proposed Agreement between the State and the NRC pursuant to Section 274 of the Act, and the NRC staff draft assessment of the State regulatory program, in parallel with the publication of the proposed Agreement in the *FR*.

3. Note:

a. The staff will place a copy of the NRC Staff Draft Assessment (summarized in the *FR* Notice) in the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/reading-rm/adams.html, and into the Agencywide Documents Access and Management System.

b. The Office of Congressional Affairs will dispatch a letter to the knowledgeable Congressional Committees informing them that the Commission is considering entering into an Agreement with the State.

c. The Office of Public Affairs will issue a press release.

d. FSME will dispatch a letter to the Federal Agencies listed in FSME Procedure SA-700 and all of the States.

e. The staff will continue working with New Jersey to ensure an efficient transition of NARM licensees in New Jersey within the legal requirements.

COORDINATION:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objection.

/RA/

R. W. Borchardt
Executive Director
for Operations

Enclosures:
1. Letter from Governor Corzine to Chairman Klein dtd 10/16/2008
2. Letter from Chairman Klein to to Governor Corzine dtd 3/19/2009
3. Draft *Federal Register* Notice
4. Draft NRC Staff Assessment

State of New Jersey
OFFICE OF THE GOVERNOR
PO Box 001
TRENTON NJ 08625-0001

JON S. CORZINE
Governor

October 16, 2008

Dale E. Klein, Chairman
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20853-2738

Dear Chairman Klein:

Please accept this formal request to establish an Agreement between the United States Nuclear Regulatory Commission (NRC) and the State of New Jersey, as authorized under Section 274b of the Atomic Energy Act of 1954 (as amended), and under Section 9.1of the New Jersey Radiation Protection Act (N.J.S.A. 26:2D).

Under this Agreement, the NRC will discontinue certain regulatory authority for radioactive materials now under federal jurisdiction and that authority will be assumed by the State of New Jersey. The New Jersey Department of Environmental Protection is the agency responsible for implementation of the agreement. Specific authority requested is described in the proposed agreement in the enclosed documents.

I certify that the State of New Jersey wishes to assume regulatory authority and oversight responsibility for such materials, and that the State of New Jersey has an adequate program for the control of radiation hazards covered by this proposed agreement. The enclosed volumes of the formal application contain copies of the radiation protection laws and rules and describe New Jersey's radiation control program as well as its regulatory capabilities.

New Jersey appreciates the efforts of NRC staff in cooperating to help New Jersey prepare for this important responsibility. It is important to us to complete this process as soon as possible. We would prefer to reach Agreement Status in the summer of 2009. In any case, we would appreciate your efforts in helping us complete this process no later than September 30, 2009.

Sincerely,

Jon S. Corzine

Governor

March 19, 2009

The Honorable Jon S. Corzine
Governor of New Jersey
Trenton, New Jersey 08625

Dear Governor Corzine:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of October 16, 2008, in which you request an agreement between the NRC and the State of New Jersey pursuant to Section 274b of the Atomic Energy Act of 1954, as amended (Act). If approved by the Commission, New Jersey would assume regulatory authority over the acquisition, possession, use, transfer, and disposal of source material, byproduct material as defined in Section 11e.(1) of the Act, byproduct material as defined in Section 11e.(3) of the Act, byproduct material as defined in Section 11e.(4) of the Act, and special nuclear material in quantities not sufficient to form a critical mass.

As required by the Act, the NRC staff is conducting an assessment of the compatibility of the New Jersey program with the NRC's program and the adequacy of New Jersey's program to protect public health and safety with respect to the materials covered by the proposed agreement. Once approved by the Commission, the NRC will publish the proposed agreement and a summary of the assessment in the *Federal Register* for public comment. The Act requires that the proposed agreement be published once each week for four consecutive weeks. A press release concerning your request will also be issued at that time. After the expiration of the comment period, the Commission will consider any comments received and make a final decision on your request. We will promptly inform you of our decision. As the review of your request and the public comment process near completion, the NRC staff will coordinate the schedule for the effective date of the future agreement with the New Jersey staff.

I want to assure you that the NRC staff is working diligently to complete its review in an expeditious manner. The Commission is pleased with your continued interest in becoming an Agreement State and looks forward to continuing the excellent relationship we have enjoyed in the past.

Sincerely,

/RA/

Dale E. Klein

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

State of New Jersey: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of New Jersey

[NRC-2009-0142]

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the State of New Jersey.

SUMMARY: By letter dated October 16, 2008, Governor Jon S. Corzine of New Jersey requested that the U. S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of New Jersey (State or New Jersey) as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and the State would assume, portions of the Commission's regulatory authority exercised within the State. As required by the Act, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of an assessment by the NRC staff of the State's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the State's program, and the State's program staff, as discussed in this notice.

The proposed Agreement would exempt persons who possess or use certain radioactive materials in the State from portions of the Commission's regulatory authority. The Act requires that the NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the *Federal Register* and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period ends (insert 30 days after date of publication). Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the comment period ends.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rulemaking and Directives Branch, MS TWB-05-B01M, Division of Administrative Services, Office of Administration, Washington, DC 20555-0001. Members of the public are invited and encouraged to submit comments electronically to http://www.regulations.gov. Search on Docket ID: [NRC-2009-0142] and follow the instructions for submitting comments.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/reading-rm/adams.html. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397-4209, or (301) 415-4737, or by e-mail to pdr.resource@nrc.gov.

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O-1-F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of New Jersey including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room-ADAMS Accession Numbers: ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, ML090770116.

FOR FURTHER INFORMATION CONTACT: Torre Taylor, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-7900 or e-mail to torre.taylor@nrc.gov .

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 36 States. The Agreement States currently regulate approximately 19,000 Agreement material licenses, while the NRC regulates approximately 3,400 licenses. Under the proposed Agreement, approximately 500 NRC licenses will transfer to the State. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the *Federal Register* for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274b of the Act provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of the materials. The radioactive materials, sometimes referred to as "Agreement materials," are: (a) byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) byproduct materials as defined in Section 11e.(3) of the Act; (d) byproduct materials as defined in Section 11e.(4) of the Act; (e) source materials as defined in Section 11z. of the Act; and (f) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

In a letter dated October 16, 2008, Governor Corzine certified that the State of New Jersey has a program for the control of radiation hazards that is adequate to protect public health and safety within New Jersey for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the "categories of materials") that the State requests authority over are:

(1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act;

(2) The possession and use of byproduct materials as defined in section 11e.(3) of the Act;

(3) The possession and use of byproduct materials as defined in section 11e.(4) of the Act;

(4) The possession and use of source materials;

(5) The possession and use of special nuclear materials in quantities not sufficient to form a critical mass; and

(6) The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

(b) The proposed Agreement contains articles that:

i) Specify the materials and activities over which authority is transferred;

ii) Specify the activities over which the Commission will retain regulatory authority;

iii) Continue the authority of the Commission to safeguard nuclear materials and restricted data;

iv) Commit the State and NRC to exchange information as necessary to maintain coordinated and compatible programs;

v) Provide for the reciprocal recognition of licenses;

vi) Provide for the suspension or termination of the Agreement; and

vii) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of New Jersey.

(c) The regulatory program is authorized by law under the New Jersey Statute N.J.S.A. 26:2D-1, the Radiation Protection Act, which provides the Governor with the authority to enter into an Agreement with the Commission. New Jersey law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as State licenses until the licenses expire or are replaced by State issued licenses.

The State currently regulates the users of naturally-occurring and accelerator-produced radioactive materials (NARM). The Energy Policy Act of 2005 (EPAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and 11e.(4) of the Act, to include certain naturally-occurring and accelerator-produced radioactive materials. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPAct requirements, which is effective through August 7, 2009. A plan to facilitate an orderly transition of regulatory authority with respect to byproduct material as defined in Sections 11e.(3) and 11e.(4) was noticed in the *Federal Register* on October 19, 2007 (72 FR 59158). Under the proposed Agreement, the State would assume regulatory authority for these

radioactive materials. The State has proposed an effective date for the Agreement of no later than September 30, 2009. If the proposed Agreement is approved before August 7, 2009, the Commission would terminate the time-limited waiver in the State coincident with the effective date of the Agreement. However, if the Agreement is not approved prior to this date, NRC would have jurisdictional authority over all uses of byproduct material within the State. These licensees would have to meet NRC regulatory requirements and would have 6 months to apply for any necessary amendments to an NRC license they already possess, or 12 months to apply for a new NRC license, if needed.

With the effective date of the New Jersey Agreement having the potential to occur after the expiration of the time-limited waiver, staff is working to ensure an efficient transition of NARM licensees in New Jersey within the legal requirements. The staff's objective is to minimize the impact to NARM licensees in New Jersey during the transition to NRC and then back to New Jersey's regulatory authority, within a short time frame (i.e., about 7 weeks).

(d) The NRC draft staff assessment finds that the New Jersey Department of Environmental Protection (NJDEP), Bureau of Environmental Radiation (BER), is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement materials.

II. Summary of the NRC Staff Assessment of the State's Program for the Control of Agreement Materials

The NRC staff has examined the State's request for an Agreement with respect to the ability of the radiation control program to regulate Agreement materials. The examination was based on the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through

Agreement," (46 FR 7540; January 23, 1981, as amended by Policy Statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983), and the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700, "Processing an Agreement."

(a) Organization and Personnel. The Agreement materials program will be located within the existing BER of the NJDEP. The BER will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the BER staff members are specified in the State's personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold a bachelor of science degree in physical or life sciences, with many staff holding a master of science degree in radiation science. All have had training and work experience in radiation protection. Supervisory level staff has at least 5 years of working experience in radiation protection, with most having greater than 10 years of experience.

The State performed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, the State has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The State will employ a staff with the equivalent of 13.25 full-time professional/technical and administrative employees for the Agreement materials program.

The State has indicated that the BER has an adequate number of trained and qualified staff in place. The State has developed qualification procedures for license reviewers and inspectors which are similar to the NRC's procedures. The technical staff is accompanying NRC staff on inspections of NRC licensees in New Jersey. BER staff is also actively supplementing their experience through direct meetings, discussions, and facility visits with NRC licensees in the State, and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the BER technical staff identified by the State to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of Agreement materials.

(b) Legislation and Regulations. In conjunction with the rulemaking authority vested in the New Jersey Commission on Radiation Protection (N.J.S.A. 26:2D-7), the BER has the requisite authority to promulgate regulations for protection against radiation. The law provides BER the authority to issue licenses and orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors.

The NRC staff verified that the State adopted the relevant NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150 into New Jersey Administrative Code, Title 7, Chapter 28. The NRC staff also approved two license conditions to implement Increased Controls and Fingerprinting and Criminal History Records Check requirements for risk-significant radioactive materials for certain State licensees under the proposed Agreement. These license conditions will replace the Orders that NRC issued (EA-05-090 and EA-07-305) to these licensees that will transfer to the State. Therefore, on the proposed effective date of the Agreement, the State will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass. The NRC staff also verified that the State will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. The State has adopted NRC compatible requirements for the handling and storage of radioactive material. The State is requesting authority to regulate the land disposal of byproduct, source, and special nuclear waste materials received from other

persons. The State waste disposal requirements cover the preparation, classification, and manifesting of radioactive waste generated by State licensees for transfer for disposal to an authorized waste disposal site or broker. The State has adopted the regulations for a land disposal site but does not expect to need to implement them in the near future since the State is a member of the Atlantic Compact and has access to the waste disposal site, EnergySolutions Barnwell Operations, located in Barnwell, South Carolina.

(d) Transportation of Radioactive Material. The State has adopted compatible regulations to the NRC regulations in 10 CFR Part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. The State will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) Recordkeeping and Incident Reporting. The State has adopted compatible regulations to the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving Agreement materials.

(f) Evaluation of License Applications. The State has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The State has also developed a licensing procedure manual, along with accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. The State has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The BER has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. The State has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. The State is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The State has also adopted administrative procedures to assure fair and impartial treatment of license applicants. State law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. State Statute contains a provision that provides for the recognition of existing NRC and Agreement State licenses. New Jersey has a process in place for the transition of active NRC licenses. Upon completion of the Agreement, all active NRC licenses issued to facilities in New Jersey will be recognized as NJDEP licenses. New Jersey will issue a brief licensing document that will include licensee specific information, as well as an expiration date, with a license condition that authorizes receipt, acquisition, possession, and transfer of byproduct, source, and/or special nuclear material; the authorized use(s); purposes; and the places of use as designated on the NRC license. The license condition will also commit the licensee to conduct its program in accordance with the NRC license and commitments. The NJDEP rules will govern unless the statements, representations and procedures in the licensee's application and correspondence are more restrictive than the rules. NJDEP will then issue full NJDEP licenses, over approximately 13 months.

The State also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. New Jersey regulations, in N.J.A.C. 28:51.1, provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits the State to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the

regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the State to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Section 274d of the Act provides that the Commission shall enter into an Agreement under Section 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the Agreement materials within the State, and that the State desires to assume regulatory responsibility for the Agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification by the State of New Jersey in the application for an Agreement submitted by Governor Corzine on October 16, 2008, and the supporting information provided by NJDEP, BER, and concludes that the State of New Jersey satisfies the criteria in the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," and meets the requirements of Section 274 of the Act.

Therefore, the proposed State of New Jersey program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

Dated at Rockville, Maryland, this [ ] day of [month], 2009.

For the Nuclear Regulatory Commission.

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

APPENDIX A

AN AGREEMENT BETWEEN

THE UNITED STATES NUCLEAR REGULATORY COMMISSION

AND

THE STATE OF NEW JERSEY

FOR THE

DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY

AND

RESPONSIBILITY WITHIN THE STATE PURSUANT TO

SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, The United States Nuclear Regulatory Commission (the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (hereinafter referred to as the Act), to enter into Agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (2), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

WHEREAS, The Governor of the State of New Jersey is authorized under The Radiation Protection Act, N.J.S.A. 26:2D-1, to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State of New Jersey certified on October 16, 2008, that the State of New Jersey (the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

WHEREAS, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, This Agreement is entered into pursuant to the provisions of the Act;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State acting on behalf of the State as follows:

ARTICLE I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials;
5. Special nuclear materials in quantities not sufficient to form a critical mass;

6. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

ARTICLE II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;
5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.
6. The regulation of byproduct material as defined in Section 11e.(2) of the Act;

ARTICLE III

With the exception of those activities identified in Article II, paragraphs 1 through 4, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

ARTICLE VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible.

The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for

protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

ARTICLE VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists

requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE IX

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland this [date] day of [month], [year].

For the United States Nuclear Regulatory Commission.

_____

Dale E. Klein, Chairman.

Done at Trenton, New Jersey this [date] day of [month], [year].

For the State of New Jersey.

_____

Jon S. Corzine, Governor.

DRAFT ASSESSMENT

of the proposed

NEW JERSEY PROGRAM FOR THE REGULATION OF AGREEMENT MATERIALS

as described in the

REQUEST FOR AN AGREEMENT

This Assessment examines the proposed State of New Jersey Program with respect to the ability of the program to regulate the possession, use, and disposal of radioactive materials subject to the Atomic Energy Act of 1954 (Act), as amended.[1] This Assessment was performed using the criteria in the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (referred to below as the "criteria")[2] using the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700 "Processing an Agreement". Each criterion, and the staff assessment related thereto, is addressed separately below.

OBJECTIVES

1. *Protection.* **A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.**

The proposed Agreement State Program for the State for regulating radioactive materials is located in the Bureau of Environmental Radiation (BER) within the New Jersey Department of Environmental Protection (NJDEP). The NJDEP is a cabinet level Department with the Commissioner reporting directly to the Governor of New Jersey.

The NJDEP has the statutory authority to establish the Agreement State Program and to implement it by the Radiation Protection Act (N.J.S.A. 26:2D-1), the Administrative Procedures Act (N.J.S.A.52:14B-1 et seq.), and the Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act.

The authorities to issue, amend, suspend or revoke licenses; place conditions and to issue orders; or assess administrative fines is vested by Statute in the Radiation Protection Act, N.J.S.A. 26:D-7 and 26:D-9.

---

[1]According to paragraph (a) of Section 274, the radioactive materials subject to the Act are byproduct, source and special nuclear materials.

[2]NRC Statement of Policy published in the Federal Register, January 23, 1981 (46 FR 7540-7546), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the Federal Register, July 21, 1983 (48 FR 33376).

The NRC staff verified that the State's Agreement State Program design for distributing regulatory responsibilities to the program staff is similar to designs used successfully in other Agreement States, and that all necessary program elements have been addressed.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

RADIATION PROTECTION STANDARDS

2. Standards. **The State regulatory program shall adopt a set of standards for protection against radiation which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.**

In conjunction with the rulemaking authority vested in the New Jersey Commission on Radiation Protection by New Jersey Statute 26:2D-7 of the Radiation Protection Act, the BER has the requisite authority to promulgate rules for protection against radiation.

The NRC staff verified that the State adopted the relevant NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150 into State Regulations, New Jersey Administrative Code (N.J.A.C.) Title 7 Section 28, Radiation Protection Programs. The State has adopted an adequate and compatible set of radiation protection regulations which apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

3. Uniformity of Radiation Standards. **It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.**

The State, by statute, must promulgate and enforce rules for the regulation of byproduct, source, and special nuclear material that are in accordance with Section 274 of the Act,

as amended. The NRC staff verified that the State adopted regulations compatible with 10 CFR Part 20.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

4. Total Occupational Radiation Exposure. **The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.**

The NRC staff review verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Part 20, including Subpart C, the occupational dose limits and Subpart D, the dose limits to individual members of the public. State licensees are required to consider the radiation doses to individuals from all sources of radiation, except background radiation and radiation from medical procedures. Like NRC licensees, State licensees are required to consider the radiation dose whether the sources are licensed or unlicensed.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

5. Surveys, Monitoring. **Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.**

NRC requires surveys and monitoring pursuant to Subpart F of 10 CFR Part 20. The NRC staff review verified that the State has adopted regulations compatible with 10 CFR Part 20 Subpart F. Therefore, State licensees are required to conduct surveys and personnel monitoring to the same standards required of NRC licensees.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

6. Labels, Signs, Symbols. **It is desirable to achieve uniformity in labels, signs and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.**

The NRC staff review verified that the State has adopted regulations compatible with the NRC regulations in Subpart J of 10 CFR Part 20. Therefore, the radiation labels, signs, symbols, and the posting and labeling requirements in the State regulations are compatible with those contained in the NRC regulations.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

7. Instruction. **Persons working in or frequenting restricted areas shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, Section 19.16 and to be represented during inspections as specified in Section 19.14 of 10 CFR 19.**

The NRC staff review verified that the State has adopted regulations compatible with the NRC regulations 10 CFR Part 19.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

8. Storage. **Licensed radioactive material in storage shall be secured against unauthorized removal.**

The NRC staff review verified that the State has adopted regulations compatible with the NRC regulations in Subpart I of 10 CFR Part 20.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

9. Radioactive Waste Disposal. **(a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority. Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR 20. The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.**

The NRC staff review confirmed that the State has adopted regulations that are compatible with the NRC regulations in Subpart K of 10 CFR Part 20 - Waste Disposal. These regulations deal with general requirements for waste disposal and are applicable to all licensees.

The staff concludes that Criterion 9(a) is satisfied.

(b) Land Disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons, which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR Part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (Section 151(a)(2), Pub. L. 97-425).

The NRC staff verified that the State has adopted regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements, and applicable supporting sections set forth in 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste."

The staff concludes that Criterion 9(b) is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

10. Regulations Governing Shipment of Radioactive Materials. **The State shall, to the extent of its jurisdiction, promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U. S. Department of Transportation and other agencies of the United States**

whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.

The NRC staff verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Part 71. The State's regulations specifically exempt areas of exclusive NRC jurisdiction.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

11. Records and Reports. **The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.**

The NRC staff review verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150. The records and reports referenced in Criterion 11 are regulatory requirements in these parts. The State has adopted the necessary record and reporting requirements.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

12. Additional Requirements and Exemptions. **Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.**

The NRC staff has verified that the State has adopted a regulation which is compatible with 10 CFR 30.34, Terms and conditions of licenses, in N.J.A.C. 7:28-51.1. The State regulations provide the radiation control agency authority to impose, by order or license condition, additional health and safety requirements beyond the requirements specified in law and in the rules. The agency also has legal authority to grant reasonable and

necessary exceptions to the regulatory requirements, either by order or by license condition.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

PRIOR EVALUATION OF USES OF RADIOACTIVE MATERIALS

13. Prior Evaluation of Hazards and Uses, Exceptions. **In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards, and the capability of the user or possessor prior to his receipt of materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the processor and user. These categories fall into two groups: those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating specific use.**

The State has adopted regulations containing regulatory requirements for applying for and issuing licenses, which are compatible with NRC's regulations.

The NRC staff review confirmed that the State's regulations provide that only NRC may issue a license authorizing the distribution of Agreement materials that will subsequently be exempt from regulatory control.

Since Criterion 13 was adopted, the Commission has determined that the regulatory authority to conduct safety evaluations of sealed sources and devices may be retained by the NRC, unless the State requests assumption of the authority and has in place an adequate and compatible program to implement the authority. The State has decided not to seek authority for evaluation of sealed sources and devices.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS:

ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

14. Evaluation Criteria. **In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing regulatory guides for various categories of licensed activities.**

The NRC staff review determined that the State has established a series of procedures, checklists, and forms to be used in evaluating proposals for radioactive materials use. These will be used in addition to the licensing guidance in the NRC's NUREG-1556 series. In addition, the State developed administrative licensing procedures that define the review process for a new license application, amendment, renewal, and license termination. The State licensing procedures are similar to NRC procedures.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

15. Human Use. **The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.**

The NRC staff verified that the State has adopted compatible regulations to the NRC regulations in 10 CFR Part 35. Therefore the State's regulations include training and experience requirements for use of radioactive material which are equivalent to the NRC requirements.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

INSPECTION

16. Purpose, Frequency. **The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.**

The NRC staff confirmed that the State has statutory authority to conduct inspections of licensees. The State has adopted regulations compatible with equivalent parts of the NRC regulations containing provisions relating to inspections and tests.

The State has adopted a schedule for inspection of licensees at least as frequent as the schedule used by NRC. The State staff has developed internal procedures and accompanying forms for the inspection areas which cover scheduling, preparation, performance basis, tracking and documentation of inspection results. The inspection procedures are similar to NRC procedures.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

17. Inspections Compulsory. **Licensees shall be under obligation by law to provide access to inspectors.**

The NRC staff review confirmed that State law provides authority for radiation control program inspectors to enter public or private property at all reasonable times for the purpose of investigating conditions related to radiation use.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Statute: 26:2D-9. State Regulations N.J.A.C. Title 7 Chapter 28.

18. Notification of Results of Inspection. **Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.**

The NRC staff review determined that the State has adopted procedures to convey a copy of the formal inspection report to the licensees, both when violations are found, and when no violations are found. The procedures identify the staff responsible and specify

the time limit for preparing the inspection report, the process for management review and approval, and provide instructions for distribution of the report to the licensee and to the State's official files.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

ENFORCEMENT

19. Enforcement. **Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.**

The NRC staff review confirmed that the State is authorized by law to enforce the State's regulations using a variety of sanctions, including the imposition of administrative fines, the issuance of orders to suspend, modify or revoke licenses, and any other action deemed appropriate by the Program. The Program may assess civil penalties in accordance with State Law and Department regulations.

The Program has adopted policies and procedures to implement the enforcement authority. The State enforcement procedures are similar to the NRC procedures with regard to the use of severity levels for violations.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2, 26:2D-13, 26:2D-22, 26:2D-23.4, 26:2D-36, 26:2D-57, 26:2D-77. State Regulation: N.J.A.C. 7:28-2.13.

PERSONNEL

20. Qualifications of Regulatory and Inspection Personnel. **The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspections of licensees must be conducted by**

persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments (their selection, use and calibration), laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State regulatory staff may need to be supplemented by consultants of other State agencies with expertise in geology, hydrology, water quality, radiobiology and engineering disciplines.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life science, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training - radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which are out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in the field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, the trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories, proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

Based on the review of the organizational charts and position descriptions for the Bureau of Environmental Radiation (BER), the BER training and qualification plan, and the curricula vitae for the current staff members, the NRC staff concludes that the BER has a staffing plan that provides a sufficient number of adequately trained and qualified technical staff.

a. Assessment of the Agreement Materials Staffing

There are about 500 NRC specific licenses in the State. The State currently conducts a licensing and inspection program for about 500 naturally occurring or accelerator-produced radioactive material (NARM) users. About 300 of these NARM users currently have an NRC license. When the NRC and State licenses are combined, there will be approximately 700 specific licenses in New Jersey. Additionally, there are over 400 general license registrations.

The staff of the Radioactive Materials Section (RMS), in BER, will be responsible for implementing the majority of the Agreement State Program. The Radiological Assessment Section, in BER, will be responsible for the remainder of the Agreement State Program, including decommissioning, low-level radioactive waste disposal site regulation, and will provide assistance with nuclear medicine licensees, increased controls and general license registration.

The State conducted an analysis of the expected workload to establish an appropriate staffing plan. The State estimates that there will be approximately 700 specific licenses after the NRC and State licenses are combined. The State has determined that 13.25 FTE (full-time equivalent) is adequate for operating the Agreement State Program. This projection is based on data from the NRC, Agreement States, and BER's own internal information.

At the time of the NRC review of the application, there was one vacant technical position in BER to support the Agreement State Program. This position has been filled and the individual was on staff April 15, 2009. There is currently 9.5 FTE (technical staff) devoted to support the Agreement State Program, which includes the Supervisor of the RMS. The RMS Supervisor will provide the day-to-day supervision of the Agreement State Program. The Supervisor plans on devoting 100% of his time to the Agreement State Program, including management review of licensing and inspection actions, personnel responsibilities, rule development, and accompaniment of inspectors for annual management review. The BER Bureau Chief will spend 35% of her time to the Agreement State Program, including management review of certain actions, personnel responsibilities, and rule development. There are two staff members that provide 2 FTE of administrative support to the program and one staff member that will spend 40% of her time providing management assistance to the Agreement State Program. The staff will work in all aspects of the materials program, including licensing, inspection, enforcement, emergency response, and rule development.

The NRC staff concludes that BER has an adequate number of staff to transition to and meet the anticipated needs of the Agreement State Program.

The staff concludes that criterion 20(a) is satisfied.

b. Assessment of Staff Qualifications

The NRC staff review considered the qualifications of the individuals currently on the BER staff that would be involved in the Agreement State Materials Program and the procedures for training and qualifying new staff members.

Under the proposed Agreement, the BER will implement the Agreement State Program. The Bureau Chief of BER has a Bachelor of Arts degree in Biology and a Master of Science degree in Radiation Science. She has 28 years experience, as a radiation physicist and in management, with NJDEP within a variety of program areas including radioactive materials, decommissioning/site remediation, radioanalytical laboratory program, and emergency response.

The Supervisor of RMS will be responsible for the Program's administration and will provide the immediate day-to-day supervision of the Agreement State Materials Program. The Supervisor of RMS has a Bachelor of Science in Biology, a Master of Science in Radiation Science, and has a Nuclear Medicine Certification. He has about 25 years of experience in all aspects of the NJDEP programs – licensing and inspection of NARM licenses, radiation measurements, calibration, laboratory design, and emergency response. Additionally, he has experience as a nuclear medicine technologist, responsible for the preparation and use of radiopharmaceuticals for diagnostic and therapeutic purposes and the operation of clinical nuclear medicine instruments.

All other staff members have a Bachelor of Science degree in one of the following subject areas: environmental science, nuclear engineering, earth sciences, chemistry, physics, and biochemistry, with one person also possessing a Bachelor of Science degree in mathematics. Additionally, 5 staff members have a Master of Science in Radiation Science, one staff member has a Master of Business Administration, and another has begun graduate work in environmental policy studies.

The majority of the BER technical staff has extensive health physics and radiation science experience, within NJDEP as well as work in the private sector. Staff has work experience in nuclear engineering; as a radiation safety officer in medical and radiopharmaceutical facilities, environmental protection and remediation; and with radiopharmaceutical production. The technical staff has completed or is scheduled to complete the NRC recommended core courses, or have received waivers from BER based on prior training and experience.

The BER has had a strong NARM program for many years, regulating approximately 500 NARM licensees; consequently, the majority of staff currently with the program has extensive licensing and inspection experience. The BER technical staff has accompanied NRC staff on inspections of NRC licensees in the State, and is continuing to accompany NRC on more inspections in preparation for the transition to an Agreement State.

NRC staff believes that the BER technical staff identified by the State to work in the Agreement State Program are trained in accordance with the BER plans, have sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and techniques of inspecting licensed users of radioactive materials.

The NRC staff concludes that the proposed BER has a sufficient number of adequately trained staff to transition to the Agreement State Materials Program and to meet program needs.

The staff concludes that criterion 20(b) is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116.

21. Conditions Applicable to Special Nuclear Material, Source Material and Tritium. **Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms, (1) transfers of special nuclear material, source material and tritium, and (2) periodic inventory data.**

The NRC staff review did not note any aspects of the State's Agreement State Program that could potentially interfere with duties imposed on a holder of materials by the NRC. In addition, the State's regulations specifically exempt areas of exclusive NRC or other Federal jurisdiction from State regulation. The staff is therefore satisfied that the State will not interfere with duties imposed on the holder of materials by the NRC.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

22. Special Nuclear Material Defined. **Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium 233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all**

kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:

175 (grams contained U-235)/350 + 50 (grams U-233)/200 + 50 (grams PU)/200 = 1

The NRC staff determined that the State's definition of special nuclear material in quantities not sufficient to form a critical mass in N.J.A.C 7:28-62.1, is compatible with that of the Commission's.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

ADMINISTRATION

23. Fair and Impartial Administration. **State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:**

a. Formulation of rules of general applicability;
b. Approving or denying applications for licenses or authorization to process and use radioactive materials; and
c. Taking disciplinary actions against licensees.

The NRC staff review confirmed that the BER is bound by general statutory provisions with respect to providing the opportunity for public participation in rulemaking, licensing actions, and disciplinary actions. These general statutory provisions also apply to the protection of personnel radiation exposure records from public disclosure, maintaining the confidentiality of allegers, and administrative and judicial requirements for requesting and holding hearings on enforcement matters.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Statute: N.J.S.A. 52:14B-1 and 2 et seq. and N.J.S.A. 26:2D-7. State Regulation: N.J.A.C. Title 7 Chapter 28 and N.J.A.C. 7:1D-1.1

24. State Agency Designation. **The State should indicate which agency or agencies will have authority for carrying on the program and should provide the NRC with a**

summary of that legal authority. There should be assurances against duplicateregulation and licensing by State and local authorities, and it may be desirable that there be a single or central regulatory authority.

The NRC staff determined that the New Jersey Department of Environmental Protection is designated by State Statute 26:2D-9 to be the lead agency for carrying out the terms of the proposed Agreement, which will assure against duplicate regulations or licensing by State and local authorities. The staff determined that the State regulations specifically exclude any areas in which the jurisdiction of the NRC or another Federal agency is exclusive, gives sufficient assurance against duplicate regulation between the State and the NRC in the regulation of Agreement Material.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Statute: 26:2D-3, 26:2D-6, 26:2D-8, 26:2D-9 and 26:D-17.

25. Existing NRC Licenses and Pending Applications. **In effecting the discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect, for an appropriate period of time under State Law, existing NRC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier reexamination or termination of the license.**

The NRC staff review confirmed that State Statute 26:2D-9 contains a provision that provides for recognition of existing NRC and Agreement State licenses. State procedure BER 3.08, "License Transition from NRC to New Jersey," addresses the transfer of NRC licenses to the State. N.J.A.C. 7:28-62.1 provides a process for recognition of other Agreement State licenses and N.J.A.C. 7:28-64.6 establishes the fees for reciprocity of other State licenses.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, ML090770116. State Regulation N.J.A.C. Title 7 Chapter 28.

26. Relations with Federal Government and Other States. **There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.**

The NRC staff review verified that the proposed Agreement commits the State to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the State will continue to be compatible with the NRC's program for the regulation of agreement materials.

In a revised Policy Statement on Adequacy and Compatibility of Agreement State Programs (published September 3, 1997 at 62 FR 46517), the Commission determined that providing reports to NRC of Agreement State licensee incidents, accidents and other significant events is a matter of compatibility. The State has adopted procedures to provide such reports to NRC.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Statute: N.J.S.A. 26:D-9. State Regulations: N.J.A.C. Title 7 Chapter 28.

27. **Coverage, Amendments, Reciprocity. An amendment providing for discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State may relate to any one or more of the following categories of materials within the State, as contemplated by Public Law 86-373 and Public Law 95-604:**

a. Byproduct material as defined in Section 11e(1) of the Act,
b. Byproduct material as defined in Section 11e(2) of the Act,
c. Byproduct material as defined in Section 11e(3) of the Act,
d. Byproduct material as defined in Section 11e(4) of the Act,
e. Source material,
f. Special nuclear material in quantities not sufficient to form a critical mass,
g. Low-level wastes in permanent disposal facilities, as defined by statute or Commission rules or regulations containing one or more of the materials stated in a, c, and d above but not including byproduct material as defined in Section 11e(2) of the Act;

but must relate to the whole of such category or categories and not to a part of any category. If less than the five categories are included in any discontinuance of jurisdiction, discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State of the others may be accomplished subsequently by an amendment or by a later Agreement.

Arrangements should be made for the reciprocal recognition of State licenses and NRC licenses in connection with out-of-jurisdiction operations by a State or NRC licensee.

The NRC staff review verified that the proposed Agreement provides for the Commission to relinquish, and the State to assume, regulatory authority over the types of material defined in categories a, c, d, e, f, and g above.

Since this criterion was adopted, the Commission has determined that the Agreement States may assume the authority to evaluate the safety of sealed sources and devices to be distributed in interstate commerce as a separate portion of the Agreement, or to allow NRC to retain that authority. The State has chosen not to assume that authority.

The proposed Agreement stipulates the desirability or reciprocal recognition of NRC and other Agreement State licenses, and commits the Commission and the State to cooperate to accord such reciprocity. The State's regulations provide for the reciprocal recognition of licenses from other jurisdictions.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Statute: N.J.S.A. 26:D2-9. State Regulations N.J.A.C. Title 7 Chapter 28.

28. **NRC and Department of Energy Contractors. The State should provide exemptions for NRC and DOE contractors which are substantially equivalent to the following exemptions:**

a. Prime contractors performing work for the DOE at U.S. Government-owned or controlled site;

b. Prime contractors performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;

c. Prime contractors using or operating nuclear reactors or other nuclear devices in a U.S. Government-owned vehicle or vessel; and

d. Any other prime contractor or subcontractor of DOE or NRC when the State and the NRC jointly determine (i) that, under the terms of the contract or subcontract, there is adequate assurance that the work there under can be accomplished without undue risk to the public health and safety; and (ii) that the exemption of such contractor or subcontractor is authorized by law.

The NRC staff review verified that the State has adopted compatible regulations to NRC regulations in 10 CFR Parts 30, 40 and 70 including §30.12, §40.11, and §70.11 wherein the specified exemptions are contained. The NRC staff concludes that the State regulations do provide for exemptions from the State's requirements for licensing of sources of radiation for NRC and DOE contractors or subcontractors in accordance with the criterion.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization,

and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Regulations N.J.A.C. Title 7 Chapter 28.

STAFF CONCLUSION

The NRC staff has reviewed the proposed Agreement, the certification by the State in the application for an Agreement in letter dated October 16, 2008, from Governor Corzine to Chairman Klein, and the supporting information provided by the staff of the BER.

Section 274d. of the Act provides that the Commission shall enter into an Agreement under Section 274b. with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Section 274o. and in all other respects compatible with the NRC's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The staff concludes that:

On the basis of this Assessment, the State of New Jersey meets the requirements of the Act. The State, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the NRC and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

SHIELDALLOY METALLURGICAL CORPORATION

35 S. W. Boulevard
P. O. Box 768
Newfield, NJ 08344 U.S.A.

Telephone: 856-697-6501
FAX: 856-697-6515

June 11, 2009

VIA U.S. MAIL AND ELECTRONIC SUBMISSION

Michael T. Lesar, Chief
Rulemaking, Directives and Editing Branch
MS TWB-05-B01M
Division of Administrative Services
Office of Administration
Washington, DC 20555-0001

Re: Shieldalloy Comments on New Jersey's Application to Become an Agreement State

Dear Mr. Lesar:

In response to the Federal Register notice dated May 27, 2009, 74 Fed. Reg. 25823, this letter submits comments by Shieldalloy Metallurgical Corporation ("SMC") on the application ("Application") by the State of New Jersey ("New Jersey") to enter into an agreement ("Agreement") with the U.S. Nuclear Regulatory Commission ("NRC") pursuant to Section 274 b. of the Atomic Energy Act of 1954, 42 U.S.C. § 2021(b) ("the Act"). Under the Agreement, regulatory authority over certain radioactive materials would be transferred from the NRC to New Jersey.

The Act authorizes the NRC to enter into such an agreement with a State *only if* the NRC "finds that the State program is . . . compatible with the Commission's program for regulation of such materials . . . ." *Id.* As described below, the proposed New Jersey radiation control program (the "NJ Program") is not compatible with the NRC's regulatory program, thus the Application should be denied. Even if the Application were approved, the NRC should retain regulatory jurisdiction over SMC's facility in Newfield, New Jersey ("the Newfield facility"), for which SMC holds a source materials license from the NRC, and continue to oversee the facility's decommissioning until its completion.

A. The New Jersey Program Fails to Meet the NRC's Compatibility Criteria

The NRC Staff evaluates a State's radiation control program as described in the State's formal application to become an "Agreement State" and prepares a written assessment of whether the program is compatible, as defined in the NRC Policy Statement on State Agreements

("Policy Statement").[1] The Federal Register notice includes a summary of the Staff's assessment of New Jersey's Application. 74 Fed. Reg. at 25825-26. The summary concludes that

> the State of New Jersey satisfies the criteria in the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," and meets the requirements of Section 274 of the Act. Therefore, the proposed State of New Jersey program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

Id. at 25826. On July 18, 2008, SMC submitted comments to New Jersey on the then proposed NJ Regulations.[2] In those comments, SMC pointed out the inconsistency between New Jersey's regulatory framework and the NRC's. Although the NRC Staff had these comments well in advance of the issuance of its Assessment, the Staff neither references nor addresses those comments. For that reason and the other factors discussed herein, the Staff's assessment is incomplete and in part erroneous and must be substantially revised to recognize the incompatibility of the NJ Program with the program of the Commission.

NRC guidance explains that:

> An Agreement State radiation control program is compatible with the Commission's regulatory program when the State program does not create conflicts, duplications, gaps, or other conditions that jeopardize an orderly pattern in the regulation of agreement material (source, byproduct, and small quantities of special nuclear material as identified by Section 274b. of the Atomic Energy Act, as amended) on a nationwide basis.[3]

For determining compatibility, the NRC guidance has established a set of criteria against which a State's regulatory program is evaluated. The NJ Program is incompatible with the NRC regulations in a number of significant respects.

---

[1] *Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement*, 46 Fed. Reg. 7,540, 7,543 (1981), as amended by 46 Fed. Reg. 36,969 (1981) and 48 Fed. Reg. 33,376 (1983).

[2] Letter from Hoy Frakes (SMC) to New Jersey Department of Environmental Protection ("NJDEP"), dated July 17, 2008 ("SMC Comments"), Attachment 1 hereto.

[3] *Adequacy and Compatibility of Agreement State Programs*, NRC Management Directive ("MD") 5.9, Handbook 5.9 at 1.

1. The Regulations issued by the NJDEP are Invalid

The NJ Program's Regulations ("NJ Regulations")[4] are invalid because they were not adopted in accordance with the procedural requirements of New Jersey's Administrative Procedure Act, N.J.S.A. 52:14B-1 *et seq.* ("APA"). Among other deficiencies:

- NJDEP failed to conduct a proper Federal Standards Analysis required by state law. *See* N.J.S.A. 52:14B-22 to -24. As further discussed below, the NJDEP regulations are more stringent than relevant NRC rules in areas (discussed below) such as dose criteria, restricted release standards, time period for dose calculations. The NJDEP has failed to analyze the effect of their inconsistency with Federal regulations, as required by the statute.
- NJDEP failed to analyze and minimize the adverse economic impacts of its proposal to become an Agreement State. as required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 *et seq.* The agency's approach to the decommissioning of facilities will give rise to enormous costs to Shieldalloy and other similar licensees. NJDEP failed to analyze and minimize these economic impacts as required by the APA.
- As explained below, the NJDEP modified the rule upon adoption to apply to "all persons," instead of applying only to licensees and registrants, as provided in the proposed rule. 40 N.J.R. 5201. This substantial change to the proposal means that interested parties did not have notice and an opportunity to provide meaningful public comment to the rule, as required by the APA. A rule adopted without opportunity for notice and comment is invalid.

2. The NJ Program Fails to Satisfy Compatibility Criterion 9 in that it sets Release Criteria that Differ from Those in 10 CFR Part 20

Compatibility Criterion 9 states, in relevant part: "Waste Disposal. The standards for the disposal of radioactive materials into the air, water, and sewers, and burial in the soil shall be in accordance with Part 20." As further discussed below, the NJ Regulations differ from the radiological criteria for license termination in 10 C.F.R. Part 20 in many significant respects, in violation of Compatibility Criterion 9:

(1) The NJ Regulations establish a maximum allowable total dose to a member of the public of 15 mrem/yr, instead of the 25 mrem set in 10 C.F.R. § 20.1402.[5]

(2) The NJ Regulations do not implement the "as low as reasonably achievable" ("ALARA") principle set forth in, inter alia, 10 C.F.R. § 20.1402.

(3) The NRC regulations include restricted release criteria, set forth in 10 C.F.R. § 20.1403, but the NJ Regulations do not.

---

[4] 40 N.J.R. 5196(b) (Sep. 15, 2008) (Attachment 2 hereto).

[5] NJ Regulations at 7:28-12.8.

(4) The NRC regulations in 10 C.F.R. § 20.1401(d) set a time limit of 1,000 years after decommissioning for calculating the peak annual total effective dose equivalent ("TEDE") to the average member of the critical group; the NJ Regulations set an indefinite, and potentially much longer, time limit described as "the time of the peak dose or 1,000 years, whichever is longer." [6]

(5) The NRC regulations in 10 C.F.R. § 20.1403(e) permit release of a site after decommissioning if residual radioactivity at the site has been reduced so that the Total Effective Dose Equivalent (TEDE) from residual radioactivity to the average member of the critical group would not exceed 500 mrem in any year if certain conditions are met; the NJ Regulations do not allow for more than 100 mrem TEDE under any circumstances.[7]

(6) The Part 20 regulations do not impose release limits on surface or ground waters, but incorporate those releases into the overall maximum allowable dose limits in 10 C.F.R. § 20.1402; the NJ Regulations require that radioactivity releases to the ground and surface waters be limited to the levels set by the New Jersey Ground Water and Surface Water standards.[8]

In its comments on the then proposed NJ Regulations, SMC pointed out the inconsistency between New Jersey's regulatory framework and the NRC's.[9] The NJDEP, the state agency charged with developing and implementing the NJ Regulations, rejected the challenge to the 15 mrem limit on the grounds, offered without further justification, that the limit was "not new".[10] The NJDEP also acknowledged that its proposed regulatory regime does not allow for the use of ALARA analysis and thus differs significantly from the NRC's framework:

> ALARA determinations allow the use of cost as a factor for determining what level of remediation is cost effective below the standards. The [NJDEP] and the [New Jersey Commission on Radiation Protection] did not include a provision for ALARA in meeting these dose criteria because the Brownfield and
>
> Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., does not allow such a provision.

NJ Regulations at 8. In applying for Agreement State status, New Jersey has not sought to remedy this inconsistency between its statutes and the NRC regulations.

On the need to compute peak doses beyond 1,000 years, the NJDEP stated that the NRC regulation does not apply to long-lived radionuclides, and that "it is vital to consider the peak dose, whenever it occurs, to ensure that adequate measures are taken to protect public health and

---

[6] *Id.* at 7:28-12.10(d).

[7] *Id.* at 7:28-12.11(e).

[8] *Id.* at 7:28-12.11(a)(3) and (4).

[9] SMC Comments, Attachment 1 hereto, at 2-6.

[10] NJ Regulations at 8.

safety."[11] That interpretation is contrary to the explicit language of 10 C.F.R. § 20.1401(d) and has been rejected by the NRC in briefs submitted to the U.S. Court of Appeals for the Third Circuit.[12]

On the separate limits on releases to the surface and ground waters, the NJDEP did not deny that those limits are inconsistent with the NRC standards, but asserted that the intent of the New Jersey standards "is to ensure that decommissioned facilities with residual material present do not affect the quality of any surface water near the facility. The [NJDEP] and the [New Jersey Commission on Radiation Protection]'s intent in referencing the surface water quality rules was to ensure that the surface water standards for radioactivity at N.J.A.C. 7:9B-1.14(c)6 are met in order to verify that health and safety of humans and the environment are sufficiently protected."[13] The NJDEP did not explicitly address the absence of restricted release criteria in its regulations,[14] nor the failure to provide for increased levels of residual radioactivity after decommissioning if certain conditions are met.[15]

The regulatory requirements and standards for facility decommissioning in the NJ Program are thus vastly different from those which the NRC has established and applies to licensed facilities undergoing decommissioning. The NJ Program creates conflicts and gaps with the essential objectives of the NRC regulations and is therefore fundamentally incompatible with the NRC regulatory framework.

3. The NJ Program Fails to Satisfy Compatibility Criterion 12

Compatibility Criterion 12 states: "Additional Requirements and Exemptions. Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety" (emphasis added). Contrary to that criterion, the NJ Regulations fail to provide for granting necessary exceptions to the regulatory standards that do not jeopardize health and safety. There are at least four instances of the failure of New Jersey's regulatory scheme to comply with Criterion 12:

> (1) As discussed above, the NJ Regulations will not allow consideration of alternate remediation standards that would increase the allowed incremental dose criterion of 15 mrem/yr

---

[11] *Id.* at 5-6.

[12] *State of New Jersey v. NRC* (Third Circuit), Brief for the Federal Respondents (Aug. 27, 2007), Attachment 3 hereto, at 55-57.

[13] NJ Regulations at 6.

[14] However, NJ has strongly opposed implementation of the NRC's restricted release criteria at SMC's Newfield site. Such opposition has manifested itself by a legal challenge to the NRC guidance that would apply to the implementation of the criteria to SMC's Newfield facility, as well as an administrative challenge (currently ongoing) to SMC's decommissioning plan for that facility. *See New Jersey v. NRC*, 526 F.3d 98 (3d Cir. 2008); *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-09-01, __ NRC __ (2009).

[15] The increased levels of radioactivity allowed by the NRC and rejected by New Jersey are part of the restricted conditions for license termination that include implementation of the ALARA principle. 10 C.F.R. § 20.1403(e).

> (itself significantly lower than the maximum allowable dose of 25 mrem/yr set by the NRC regulations in 10 C.F.R. § 20.1402), even if justified through an ALARA analysis. *See, e.g.,* NJ Regulations at 7:28-12.11(b).
>
> (2) As also discussed above, the NJ Regulations do not allow for any alternative remediation standards if they would result in doses exceeding 100 mrem/yr for an "all controls fail" scenario. NJ Regulations at 7:28-12.11(e).
>
> (3) The NJ Regulations require that the calculations of doses from radiological decommissioning use only tables of parameters based on specific exposure scenarios. NJ Regulations at 7:28-12.11(b).
>
> (4) When modeling the "all controls fail" scenario, the NJ Regulations allow no credit for any engineering controls, such as a fence or cover, to be taken when performing the model to determine if the 100 mrem annual dose is exceeded. The NRC, however, allows the licensee to take credit for controls that may degrade but have not completely failed.

The first two failures to comply with Compatibility Criterion 12 are discussed above, for they are also failures of comply with Criterion 9. With respect to the postulated exposure scenarios, the NJ Regulations allow licensees to request consideration of alternate parameters only for site-specific characteristics, but not for site-specific exposure scenarios. NJ Regulations at 7:28-12.11(c). SMC's comments on the proposed regulations noted that NRC guidance allows the use of realistic site-specific scenarios with justification for the reasons stated in *License Termination Rule Analysis*, SECY-03-0069 (NRC 2003); *Consolidated Decommissioning Guidance*, NUREG-1757 ("NUREG-1757"), Vol. 2, Ch. 5.[16] In rejecting SMC's comment, the NJDEP acknowledged that New Jersey has failed to adopt the alternative exposure scenarios defined in the NRC guidance:

> In proposing the adopted rules, the [NJDEP] and the [New Jersey Commission on Radiation Protection] considered the updated NRC guidance, but the basis for Tables 6 and 7 at N.J.A.C. 7:28-12.11(b) (which tables were not amended in the adopted rules) was provided when the rules were proposed at 31 N.J.R. 1723(a), and the parameters in the tables remain justified. . . . The [NJDEP] and the [New Jersey Commission on Radiation Protection] established sufficiently conservative bounds on the exposure scenarios in Tables 6 and 7 of adopted N.J.A.C. 7:28-12.11(b) to ensure that the dose criteria would be met for the length of time the residual radionuclides would be present (thousands to billions of years).

NJ Regulations at 7. New Jersey's position is directly contrary to the NRC guidance, which allows licensees to use reasonably foreseeable land uses and resulting exposure scenarios. *See, e.g.*, NUREG-1757, Vol. 2, Ch. 5 at 5-4, 5-5.

---

[16] SMC Comments at 5.

On the failure to allow credit for degraded, but not totally failed, engineering controls, SMC commented that the NRC approach reflects that engineered structures degrade by known physical processes. Instead, New Jersey assumes that engineered structures and other institutional controls instantaneously vanish, an assumption for which there is no reasoned basis, since progressive degradation over time is consistent with the behavior of the known physical world.[17] The NJDEP rejected SMC's comment as follows:

> The adopted rules do not assume that the engineered barriers fail instantaneously. Rather, the rules require the Department to consider the public health consequences in the event that the engineered barriers completely fail at some point in the future. This is a reasonable approach to ensure an adequate degree of protection to the public health and safety. The NRC approach of assuming that engineered structures degrade over time does not take into account intentional human intervention.

NJ Regulations at 7. Again, New Jersey's position is directly contrary to the NRC guidance, which allows licensees to assume that barrier degradation occurs over time in the absence of institutional controls. *See* NUREG-1757, Vol. 2, Section 3.5.2 at 3-12: ". . . When evaluating the loss of institutional controls (active monitoring and maintenance not performed), the barriers may degrade over time. An assumption of instantaneous and complete failure of a barrier is not required."

The NJ Regulations provide no justification for requiring stricter remediation standards than those provided by the NRC, or for not allowing licensees to apply the Federal standards when appropriate. They fail to allow the flexibility "to grant necessary exemptions which will not jeopardize health and safety," and have the practical impact of preventing the return of land to productive uses in appropriate cases, even when doing so would be allowed by Federal regulations. Therefore, the NJ Regulations are incompatible with the NRC regulatory framework.

4. The NJ Program Fails to Satisfy Compatibility Criterion 17

Compatibility Criterion 17 states: "Inspections Compulsory. Licensees shall be under obligation by law to provide access to inspectors." Contrary to this criterion, the governing New Jersey statute, the New Jersey Radiation Protection Act, NJSA 26:2D-1 *et seq.*, does not authorize inspections without either consent of the licensee or an order. Therefore, the NJ Regulations purporting to authorize warrantless inspections (NJ Regulations at 7:28-4.14) lack an adequate legal basis in New Jersey law and Compatibility Criterion 17 is not met.

---

[17] SMC Comments at 5-6.

5. The NJ Program Fails to Satisfy Compatibility Criterion 23

Compatibility Criterion 23 states:

> Fair and Impartial Administration. State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:
>
> a. Formulation of rules of general applicability;
>
> b. Approving or denying applications for licenses or authorization to process and use radioactive materials; and
>
> c. Taking disciplinary actions against licensees.

Many of the NJ Regulations are aimed specifically and uniquely at the SMC Newfield site. Thus, New Jersey acknowledges that the imposition of stand-alone limits on radioactive releases to the surface waters affects only "one facility in the State." NJ Regulations at 7. New Jersey seeks to defend its biased standard as follows:

> The fact that there may be only one facility in the State now affected by the rule does not mean that other facilities will not be affected in the future. In fact, each facility at which there is a potential for radioactive materials to migrate to a stream could be affected. Creating an open class is not the equivalent of special legislation, which is prohibited, nor is it arbitrary or discriminatory.

Id. That could arguably be seen as a reasonable position were it not coupled with, among others: (a) the refusal to apply the ALARA standard, (b) the refusal to allow restricted release criteria for license termination, (c) the requirement of peak dose computation beyond 1,000 years, (d) the requirement to calculate exposures only on specific exposure scenarios, and (e) the failure to allow credit for degraded engineering controls over time. All of these features of the NJ Regulations appear to apply only to the SMC facility, and their combined effect if implemented would be to preclude the possibility that the SMC site could be decommissioned in accordance with the permissible standards in 10 C.F.R. Part 20.

That the applicable NJ Regulations are indeed "special legislation" directed specifically at SMC is further demonstrated by the NJDEP's statements at a meeting with SMC representatives on December 10, 2008. A summary of the meeting prepared by the NJDEP makes it clear that the intent of the NJ Program is to force SMC to remove the licensed materials at the Newfield site instead of decommissioning them in place, as the NRC regulations allow. The letter states unequivocally: "We explained that your current approach to decommissioning will not comply with our regulations and that the slag pile, as currently characterized, would have to be removed."[18]

---

[18] Letter from Nancy Wittenberg (NJDEP) to Hoy Frakes (SMC) dated Dec. 23, 2008, Attachment 4 hereto, at 1.

For these reasons, the NJ Program fails to provide "[s]tate practices for assuring the fair and impartial administration of regulatory law," and particularly does not formulate "rules of general applicability" but its decommissioning rules are, instead, single-purpose legislation aimed exclusively at SMC. As such, the NJ Program fails to meet Compatibility Criterion 23 and is fundamentally incompatible with the NRC regulatory framework. Moreover, the "special legislation" nature of the NJ Program makes it unlawful as in violation of the New Jersey State Constitution, art. IV, § 7, ¶ 7, which provides that "[n]o general law shall embrace any provision of a private, special or local character." *See also, Phillips v. Curiale*, 128 N.J. 608, 627 (1992).

6. The NJ Program Fails to Satisfy Criterion 25

Compatibility Criterion 25 states:

> Existing NRC Licenses and Pending Applications. In effecting the discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect, for an appropriate period of time under State Law, existing NRC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier reexamination or termination of the license.

New Jersey has not sought to make "appropriate arrangements" with the NRC to ensure there will be no interference with the processing of license applications by reason of the transfer. SMC has filed a proposed decommissioning plan ("DP") for the Newfield facility which is currently under review by the NRC. Instead of ensuring the smooth processing of SMC's DP application, New Jersey has opposed it at every turn. It has requested a hearing, currently pending before an Atomic Safety and Licensing Board of the NRC, raising numerous contentions against approval of the DP.[19] It has unsuccessfully challenged in the courts the NRC guidance under which the DP would be implemented.[20] It has filed an unsuccessful request for a hearing and a stay petition with the NRC seeking to rescind the NRC guidance.[21] It has filed a rulemaking petition, again seeking to rescind the guidance;[22] and it has made other filings with the Commission challenging the DP.[23]

---

[19] *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), LBP-07-5, 65 NRC 341, 353-59 (2007) and CLI-09-01, __ NRC __ (2009).

[20] *State of New Jersey v. NRC*, 526 F.3d 98 (3d Cir. 2008).

[21] *Shieldalloy Metallurgical Corporation and NUREG-1757*, Order (January 12, 2007).

[22] Petition for Rulemaking on NUREG01757 and Request for Stay (December 22, 2006.) NJ's rulemaking petition is still pending with the NRC.

[23] State of New Jersey's Reply to the July 3, 2008 NRC Staff and Shieldalloy Submissions to the Commission (July 10, 2008).

In short, instead of ensuring that there will be no interference with or interruption of licensed activities or the processing of license applications by reason of the transfer, New Jersey has done everything possible to interfere with the processing of SMC's DP application, an interference that continues to this day. Thus, the NJ Program does not meet Compatibility Criterion 25 and is fundamentally incompatible with the NRC regulatory framework.

B. The New Jersey Radiation Protection Program is not Satisfactory Under the NRC Implementation Standards

After entering into an agreement with a State, the NRC is required to periodically review the State program and the actions taken by the State thereunder for compliance with the provisions of the Act.[24] Following established practice, the NRC is expected to conduct inspections under its Integrated Materials Performance Evaluation Program ("IMPEP") to verify the adequacy of implementation of the NJ Radiation Protection Program. Therefore, the NRC's assessment of a State's formal application is also expected to evaluate whether the State's program as presented would be found satisfactory during an NRC inspection. The NRC inspection program will find a State program "satisfactory" if it is both adequate and compatible.[25] The NJ program will not be found "satisfactory" under the NRC IMPEP evaluation criteria for inspections of Agreement State programs for at least the following reasons:[26]

- There are numerous inconsistencies between the NJ Program and the NRC regulations, as discussed above, that preclude a finding that the NJ program is satisfactory under the IMPEP.

- The NJ Regulations are made applicable to "all persons," not just licensees. In discussing this provision, New Jersey states:

> The Radiation Protection Act at N.J.S.A. 26:2D-10 requires "all sources of radiation" to be "shielded, transported, handled, used and kept in such a manner as to prevent all users thereof and all persons within effective range thereof from being exposed to unnecessary radiation." Accordingly, it was not appropriate, as proposed, to limit the scope of the rules to only those licensed or registered individuals. Rather, the rules must cover all persons, in order that they cover "all sources," as required under the statute. To limit the rules to only those licensed or registered by the State would not satisfy the requirements of the Radiation Protection Act.
>
> Similarly, the rules as proposed would not have applied to all of those activities that the Radiation Protection Act addresses. Unlike

---

[24] 42 U.S.C. § 2021.j(1).

[25] *Integrated Materials Performance Evaluation Program* ("IMPEP"), MD 5.6, Handbook at 90. In contrast, the NRC reviews other Federal programs only for adequacy.

[26] Those criteria are set forth in MD 5.9, *Adequacy and Compatibility of Agreement State Programs*, Handbook 5.9.

> the previous rules, which were sufficiently comprehensive to address the requirements of the statute, the proposed rules would not have applied to the transportation, storage, handling, or shielding of sources of radiation, contrary to the statute. As modified on adoption, the rule meets the statutory requirement.

40 NJ Reg. 5196(b), Summary of Agency-Initiated Changes. By extending the reach of its regulations to cover "all persons" in New Jersey, once the Agreement is entered into the NJ Regulations would cover persons that remain licensed by the NRC, creating a duplication with the NRC regulations.

- In particular, a decommissioned nuclear power plant in New Jersey would need to meet a surface water limit of 4 mrem per year and a one-in-a-million cancer risk for ground water, and be subject to a total TEDE limit of 15 mrem per year as per DEP's regulations in, instead of the NRC limit of a single TEDE cap of 25 mrem per year for all pathways. *See* NJ Regulations at 7:28-12.8 through -12.11. The NJ Regulations would thus essentially supersede the NRC decommissioning dose limits for the NRC licensees.

- The NJDEP lacks statutory authority for all elements of its source material program. For example, there is a difference between "radioactive materials," as defined in the NRC regulations, and "sources of radiation" that the New Jersey statute authorizes the NJDEP to regulate. The NRC definition includes additional safety aspects related to source material that are not covered under the New Jersey statute. The difference between radioactive materials, as defined in the NRC regulations, and "sources of radiation" that the NJ statute authorizes the NJDEP to regulate, is that the NRC definition includes additional safety aspects related to source material that are not covered under the New Jersey statute, such as the use of source of fissile or fertile isotopes for the production of special nuclear material.[27] The NRC compatibility guidance requires that the State program definitions be "essentially identical" to those of the NRC, and an IMPEP inspection would determine that they are not. *See* MD 5.9, *Adequacy and Compatibility of Agreement State Programs*, Handbook 5.9 at 2.

While considering a State program against the IMPEP standards prior to entering an agreement is a discretionary adjunct to the evaluation process, there should be no obvious issues at the time the Agreement is implemented that would be found to lead to program unacceptability when the NRC performs its first inspection. Such obvious issues are well in evidence in the NJ Program.

C. Even if NJ Becomes an Agreement State, the NRC Can and Should Retain Jurisdiction Over the Newfield Site and its Decommissioning

Should the Commission decide to enter into the proposed Agreement with New Jersey, it has the power to exclude the Newfield site from the transfer of authority to the State. This is explicitly contemplated by the policy embodied in Compatibility Criterion 25, which directs that

---

[27] *See generally, Licensing of Source Material Proposed Rule*, 25 Fed. Reg. 8,619 (1960).

"appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications by reason of the transfer." Exclusion of the Newfield site from the transfer of authority to NJ is also consistent with notions of fundamental fairness and efficiency, given the major expenditures of time and resources by SMC (including NRC decommissioning oversight costs of $744,000 in 2007, $995,000 in 2008 and $580,000 to date in 2009) in working with the NRC Staff to characterize the site and select the safest and environmentally soundest way of achieving its decommissioning.

Faced with a similar situation with respect to Kerr McGee's West Chicago site, the Appeal Board wrote:

> Further, the Commission policy on the state agreement process, pursuant to which the agreement was negotiated and executed, provides that, in effecting the discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications, by reason of the transfer.
>
> The unquestionable intent of this NRC policy is that jurisdiction is to be transferred to an "agreement state" in an orderly manner, with minimal disruption to any pending licensing proceeding, such as that here. The agreement with Illinois in this case contains no indication that "appropriate arrangements" have been made to assure this orderly process; indeed, it is silent as to its effect on any pending licensing or enforcement proceedings. It is reasonable to infer from this and from the Commission's statement declining to express an opinion on how the motion to terminate and to vacate should be decided, however, that those "appropriate arrangements" are to be fashioned in and through this adjudicatory proceeding. Thus, in these circumstances, we find unpersuasive the argument that the transfer of jurisdiction to the State in and of itself demands immediate termination of this proceeding.

Kerr-McGee Chemical Corporation (West Chicago Rare Earths Facility), ALAB-944, 33 N.R.C. 81, 101-02 (1991), *vacated as moot,* CLI-96-2, 43 NRC 13 (1996). In *West Chicago*, as here, there had been a protracted examination by the NRC Staff of the licensee's decommissioning plan and an administrative proceeding had been ongoing for some time. Under these circumstances, the Appeal Board concluded that application of Commission policy required ensuring "that there will be no interference with or interruption of licensed activities or the processing of license applications," and such policy could not be given effect if the oversight of the facility was transferred to the State while in the midst of an NRC adjudication. The same conclusion should be reached here.

D. Conclusions

As demonstrated above, the NJ Program deviates significantly from established NRC regulations and regulatory policies. Accordingly, the Staff's assessment that the NJ Program is compatible with the Commission's program must be set aside and New Jersey's Application to become an Agreement State must be denied.

If you have any questions concerning these comments, please feel free to contact me or my HSE Director, David White (614-599-9582).

Sincerely,

Hoy E. Frakes, Jr.
President

Enclosures (4)

c: Matias F. Travieso-Diaz, Esq., Pillsbury Winthrop Shaw Pittman LLP
NRC, FSME
J. Hayes, NRC

POLICY ISSUE
NOTATION VOTE

August 18, 2009 SECY-09-0114

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: SECTION 274b AGREEMENT WITH THE STATE OF NEW JERSEY

PURPOSE:

To request Commission approval of the proposed Agreement with the State of New Jersey. This paper does not address any new commitments.

SUMMARY:

On October 16, 2008, Governor Jon S. Corzine of the State of New Jersey requested that the Commission enter into an Agreement under Section 274b of the Atomic Energy Act of 1954, as amended (the Act). The Commission, through a Staff Requirements Memorandum (SRM) dated May 18, 2009, "SECY-09-0065, Proposed Agreement between the State of New Jersey and the Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended," agreed to publish a notice of the proposed Agreement (Enclosure 1) in the *Federal Register* (*FR*). The agency published the notice as required by the Act and requested comments. The public comment period ended on June 26, 2009, and the U.S. Nuclear Regulatory Commission (NRC) received six comment letters. Based on the staff's review of the proposed New Jersey program and analysis of the comments, the staff recommends that the Commission approve the proposed Agreement (Enclosure 1).

BACKGROUND:

In SECY-09-0065, the staff of the NRC presented a draft of its assessment and discussed the statutory and policy background of the New Jersey Agreement State program.

CONTACT: Torre Taylor, FSME/MSSA
(301) 415-7900

The Commission approved the staff's recommendation to proceed with processing the application for the New Jersey Agreement State program in an SRM dated May 18, 2009. As required by Section 274e of the Act, the agency published the proposed Agreement in the *FR* on May 27, 2009 (74 FR 25283), June 3, 2009 (74 FR 26739), June 10, 2009 (74 FR 27572), and June 17, 2009 (74 FR 28728). The comment period ended on June 26, 2009. The NRC made the full text of the staff assessment available through its Agencywide Documents Access and Management System and Public Electronic Reading Room.

The Agreement will allow New Jersey to assume regulatory authority for byproduct materials as defined in Sections 11e.(1), 11e.(3), and 11e.(4) of the Act; source materials; special nuclear materials not sufficient to form a critical mass, and regulation of land disposal of byproduct material, source material, or special nuclear material waste received from other persons. New Jersey is not seeking authority to (1) conduct safety evaluations of sealed sources and devices manufactured in New Jersey and distributed in interstate commerce, and (2) regulate Section 11e.(2) byproduct material resulting from the extraction or concentration of source material from ore processed primarily for its source material content, and its management and disposal.

DISCUSSION:

(1) Public Comments

The *FR* notice requested comments regarding (1) the proposed Agreement, (2) the NRC staff assessment of the New Jersey Agreement State program, (3) the adequacy of the New Jersey Agreement State program, and (4) the adequacy of the New Jersey Agreement State program staff. The NRC received six comment letters in response to the notice that the Governor of New Jersey has proposed to enter into an Agreement with the Commission under Section 274b of the Act.

The NRC received comments from the Organization of Agreement States; two members of the public; a regulatory and nuclear consultant; and two NRC licensees located within the State of New Jersey. Two commenters support the Agreement, two commenters oppose the Agreement and one commenter did not state either way. The remaining commenter supports the rationale whereby States can assume regulatory authority; however, was not supportive of the difference in fees between New Jersey and NRC. The staff analysis of the public comments is provided in Enclosure 2.

In summary, the comments did not provide any new information that would change the conclusions in the staff assessment of the New Jersey program. The staff has not changed the assessment in response to the comments.

(2) SECY-09-0065

In SECY-09-0065, the NRC staff concluded that, based on the draft assessment, New Jersey satisfied the Commission's policy statement and; therefore, met the requirements of Section 274 of the Act. The staff's final assessment (Enclosure 3) of the New Jersey program reflects the same conclusion that the State satisfies the Commission's policy statement and; therefore, meets the requirements of Section 274 of the Act.

(3) Transfer of Licenses

Currently, the NRC would transfer approximately 500 NRC licenses, either in whole or in part, to New Jersey's jurisdiction. The NRC staff is continuing to work closely with the New Jersey staff to effect a smooth transition. The staff is coordinating with the New Jersey staff on current and pending licensing, inspection, and enforcement activities involving the licenses to be transferred to ensure the smooth continuation of regulatory actions after the transfer.

(4) Actions Pending Against Licensees to be Transferred

At the current time, the NRC Office of Investigations has two pending investigations that may result in escalated enforcement actions against an NRC licensee located within the State. The NRC Office of Enforcement has one pending enforcement action against another licensee. Additionally, six allegations are currently open related to NRC licensees within the State. The remaining open actions that the NRC is unable to close between now and the effective date of the Agreement will either continue to be handled by the NRC with the involvement of the State or will be transferred to the State. The NRC will work closely with the State to ensure the smooth transition of authority over these open cases before the effective date of the Agreement.

(5) Outstanding Orders, Confirmatory Action Letters, and 10 CFR 2.206 Petitions Against Licensees that Will Transfer

The NRC issued orders and license conditions for Increased Controls (EA-05-090) and Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Materials (EA-07-305) to licensees in the State of New Jersey. Thirty licensees are implementing these requirements based on the quantities of regulated materials that they possess. The NRC staff will incorporate these Orders into the licenses, by license condition, by the effective date of the Agreement. Therefore, these security requirements will transfer with the licenses when the New Jersey Agreement becomes effective.

(6) Status of Decommissioning Sites and Method for Providing Information on Previously Licensed Sites

The NRC maintains status summaries for all decommissioning sites on NRC's public web site, including those that are considered complex decommissioning sites. The Commission and the public have access to the site summaries through http://www.nrc.gov/info-finder/decommissioning/complex/. Currently, there are two sites in New Jersey that are considered complex decommissioning sites – Stepan Chemical Company and Shieldalloy Metallurgical Corporation.

Under the Agreement, regulatory authority for Stepan Chemical Company will remain with NRC. The radioactive material at Stepan Chemical Company's site is Section 11e.(2) byproduct material resulting from the extraction or concentration of source material from ore processed primarily for its source material content, and its management and disposal. New Jersey has not requested this class of materials under its Agreement; therefore, the jurisdiction for this site will remain with NRC.

New Jersey has requested regulatory authority over source material. As a result, the regulatory authority for the Shieldalloy Metallurgical Corporation (SMC) site in Newfield, New Jersey, will

transfer to the State on the effective date of the Agreement. SMC is a source material licensee and currently has a decommissioning plan under review by NRC. NRC is unable to complete its review of the decommissioning plan prior to the effective date of the Agreement as NRC is still waiting for additional information from SMC, including results from technical studies.

(7) Naturally-Occurring and Accelerator-Produced Radioactive Materials

The Energy Policy Act of 2005 (EPAct) became effective immediately upon signature by the President on August 8, 2005, and authorized the Commission to regulate naturally-occurring and accelerator-produced radioactive material (NARM) as defined in the amended definition of byproduct material in Section 11e.(3) and (4) of the Atomic Energy Act. Many States regulated this material under their existing State radiation programs. New Jersey has maintained a strong NARM program for many years regulating approximately 500 NARM licensees. The EPAct, in Section 651(e)(5), authorized the Commission to issue a waiver of the requirements in Section 651(e) to any entity with respect to these NARM materials for specified periods of time if the Commission determined that the waiver was in accordance with the protection of the public health and safety and the promotion of the common defense and security. The EPAct limited the waiver to a time period no longer than 4 years. The Commission determined that there was no basis to conclude that the NARM materials would not continue to be used in a manner that is protective of public health and safety while the waiver is in effect. The Commission then granted a waiver (70 FR 51581; August 31, 2005) from the requirements of Section 651(e) of the EPAct.

Regulations to address the requirements of the EPAct were effective on November 30, 2007, and are referred to as the "NARM rule." As part of the NARM rule, NRC specifically allowed a transition period for licensees/applicants to submit license amendments or new license applications as needed for NARM. A Transition Plan was noticed in the *FR* on October 19, 2007 (72 FR 59157). The purpose of the Transition Plan is to facilitate an orderly transition of regulatory authority with respect to the NARM materials. The NRC recognized that some States may be interested in becoming Agreement States based on the passage of the EPAct. Therefore, the staff indicated in the Transition Plan that, "Every effort will be made to complete an Agreement as soon as practical, without compromising quality and completeness... If any Agreements cannot be completed before the waiver expires on August 7, 2009, the Commission may consider, on a case-by-case basis, options to limit the impact on affected users of 11e.(3) and 11e.(4) byproduct material in the States."

The Agreement for New Jersey will not be effective prior to the expiration of the NARM waiver. Staff believes that there will be a minimal impact on New Jersey licensees because of this interim time period of about 7 weeks between the expiration of the NARM waiver and the effective date of the Agreement. NRC will have jurisdictional authority during this time and there will not be a regulatory gap. NRC and New Jersey have discussed this during numerous meetings to ensure a clear understanding of the jurisdiction during this interim time period, and to ensure an efficient transition. Paul Baldauf, Assistant Director, Radiation Protection and Release Prevention, provided a letter to NRC confirming his understanding of the NARM waiver expiration and the jurisdictional authority by the NRC during this interim time period. This letter, and the NRC response, may be found in Enclosure 4. A summary of the NARM waiver expiration and the impact on the New Jersey Agreement is provided in Enclosure 5.

(8) Effective Date of the Agreement

The Governor of New Jersey requested an effective date for the Agreement of no later than September 30, 2009. Commission direction no later than September 16, 2009, is critical in order to have the Agreement effective by this date. This is necessary to minimize the interim time period between the NARM waiver expiration and the effective date of the Agreement, as well as to allow adequate time for the signing of the Agreement, the orderly transfer of the files, and the assumption of authority by New Jersey. An effective date of September 30, 2009, will also avoid fiscal year 2010 NRC fees for the licenses transferring to New Jersey. If the Agreement is approved by the Commission and is effective after September 30, 2009, these licensees will be assessed fees by New Jersey. See Enclosure 6 for a schedule of the remaining steps for processing the Agreement.

IMPLEMENTATION:

Following execution of the Agreement, the staff will continue to interact with the State of New Jersey. This interaction will consist of the exchange of regulatory information, notices of NRC training courses, and conducting periodic onsite reviews of New Jersey's program for the regulation of Agreement materials. The regulatory information exchange includes reports of incidents; significant enforcement actions; and amendments to policies, regulations, or guidance. Communications are generally more frequent with a new Agreement State during the first few years after the Agreement is signed.

The staff will tentatively schedule an orientation meeting between NRC and New Jersey Department of Environmental Protection, Bureau of Environmental Radiation, for 9 months after the effective date of the Agreement to discuss the initial program implementation. The first Integrated Materials Performance Evaluation Program (IMPEP) review of the New Jersey Agreement State program will be tentatively scheduled for 18 months after the effective date of the Agreement. Subsequent routine IMPEP reviews will occur at 4-year intervals. The interval may be shortened if performance weaknesses are identified during routine reviews or other interactions with New Jersey.

If approved by the Commission, New Jersey will bring the number of Agreement States to 37.

RESOURCES:

Staff estimates approximately 5 full-time equivalents are required in FY 2009 to perform materials licensing, inspection, decommissioning, enforcement, allegation casework and transition activities related to New Jersey. These resources are included in the FY 2009 budget within the Materials Users subprogram. The Office of Federal and State Materials and Environmental Management Programs anticipates a cost savings due to the transfer of regulatory authority to New Jersey, and has incorporated the resource adjustment in the FY 2010 budget.

CONCLUSION:

The NRC staff concludes that the State of New Jersey satisfies the criteria in the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory

Authority and Assumption Thereof by States Through Agreement," and; therefore, meets the requirements of Section 274 of the Act.

The proposed New Jersey program to regulate Agreement program materials; comprising statutes, regulations, and procedures; is compatible with the Commission's program and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

RECOMMENDATIONS:

That the Commission:

1. Find:

   a. That the proposed New Jersey program for the regulation of byproduct material, source material, special nuclear material in quantities not sufficient to form a critical mass, and regulation of land disposal of byproduct material, source material, or special nuclear material waste received from other persons is compatible with the Commission's program for the regulation of like material; and

   b. That the proposed New Jersey program is adequate to protect public health and safety within the State with respect to the materials and uses covered by the proposed Agreement.

2. Approve:

   a. The proposed Agreement between the State of New Jersey and the NRC pursuant to Section 274 of the Act, as set forth in Enclosure 1, by September 16, 2009, allowing adequate time for the signing of the Agreement, the orderly transfer of license files and the assumption of regulatory authority by the State of New Jersey on September 30, 2009.

3. Note:

   a. Approval of the proposed Agreement will result in the State of New Jersey reassuming regulatory authority over NARM which terminated on August 7, 2009 with the termination of the Commission-issued waiver (70 FR 51581).

   b. The Governor of New Jersey does not desire a formal signing ceremony. Therefore, upon approval of the Agreement by the Commission, the NRC staff will prepare the formal documents for the Chairman's signature. After the Chairman signs the Agreement, the staff will deliver the Agreement to New Jersey for the Governor's signature (Enclosure 7).

   c. Pursuant to the Act, the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), and Commission guidance, the staff will inform the Speaker of the House of Representatives, the President of the Senate, the New Jersey Congressional delegation and the Director of the Government Accountability Office of the Commission's decision.

d. The NRC Office of Public Affairs will issue a press release.

e. The agency will publish the text of the Agreement in the *FR*, as required by Section 274e of the Act, within 30 days after the Agreement is signed (Enclosure 8).

COORDINATION:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objection. The staff has obtained concurrence from the Office of Management and Budget that this action does not constitute a "major rule" under SBREFA.

/RA Martin Virgilio for/

R. W. Borchardt
Executive Director
for Operations

Enclosures:
1. Proposed Agreement
2. Staff Analysis of Public Comments
3. NRC Staff Assessment
4. Letter from P. Baldauf, NJ and NRC Response
5. Summary of NARM Waiver expiration
6. Current Milestone Schedule
7. Draft Letter from Chairman Jaczko to Governor Corzine
8. Draft *FR* Notice

d. The NRC Office of Public Affairs will issue a press release.

e. The agency will publish the text of the Agreement in the *FR*, as required by Section 274e of the Act, within 30 days after the Agreement is signed (Enclosure 8).

COORDINATION:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objection. The staff has obtained concurrence from the Office of Management and Budget that this action does not constitute a "major rule" under SBREFA.

/RA Martin Virgilio for/

R. W. Borchardt
Executive Director
for Operations

Enclosures:
1. Proposed Agreement
2. Staff Analysis of Public Comments
3. NRC Staff Assessment
4. Letter from P. Baldauf, NJ and NRC Response
5. Summary of NARM Waiver expiration
6. Current Milestone Schedule
7. Draft Letter from Chairman Jaczko to Governor Corzine
8. Draft *FR* Notice

ML091940200 **EDATS: FSME-2009-0027**

OFFICE	FSME/MSSA	FSME/MSSA	FSME/MSSA	OGC	RI	NSIR
NAME	TTaylor	DWhite	TReis (DWhite for)	BJones	SCollins	RZimmerman
DATE	07/ 29 /09	07/ 29 /09	07/ 29 /09	08/ 04 /09	07/ 30 /09	07/ 20 /09
OFFICE	CFO	FSME/MSSA	TechEd	FSME	EDO	
NAME	JDyer	RLewis (DBroaddus for)	CPoland (PTressler for)	CMiller (GPangburn for)	RBorchardt (MVirgilio for)	
DATE	07/ 29 /09	08/ 06 /09	08/11 /09	08/13 /09	08/18/09	

OFFICIAL RECORD COPY

[Federal Register: January 23, 1981 (Volume 46, Number 15)]
[Notices]
[Page 7540-7546]

NUCLEAR REGULATORY COMMISSION

Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: The Nuclear Regulatory Commission has revised its statement of policy regarding criteria for guidance of States and NRC in discontinuance of NRC regulatory authority and assumption of regulatory authority by States through agreement. This action is necessary to make editorial changes to update the policy statement, to allow States to enter into agreements for low-level waste only, and to incorporate the provisions and requirements of the Uranium Mill Tailings Radiation Control Act of 1978. Adoption of this policy will allow interested States to enter into agreements with the NRC and regulate low-level waste sites only. Additionally, those States that meet the criteria for the regulation of uranium mills and tailings may exercise regulatory authority over these sources as provided by the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

The revised statement of policy reflects the following principal changes:

1. Modification of Criterion 27 to allow a State to seek an agreement for the regulation of low-level waste as a separate category.

2. Inclusion of additional criteria for States wishing to continue regulating uranium and thorium processors and mill tailings after November 8, 1981.

3. Editorial and clarifying changes to make the statement current.

DATES: This policy statement is effective January 23, 1981.

FOR FURTHER INFORMATION CONTACT:

John F. Kendig, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone: 301-492-7767.

SUPPLEMENTARY INFORMATION:

1. These criteria were developed to implement a program, authorized by Pub. L. 86-373 which was enacted in the form of a new section to the Atomic Energy Act (Section 274) and approved by

the President on September 23, 1959 and amended by Pub. L. 95-604 approved November 8, 1978. These criteria are intended to indicate factors which the Commission intends to consider in approving new or amended agreements. They are not intended to limit Commission discretion in viewing individual agreements or amendments. In accordance with these statutory provisions, when an agreement between a State and the NRC is effected, the Commission will discontinue its regulatory authority within that State over one or more of the following materials: byproduct material as defined in Section 11e(1) of the Act (radioisotopes), byproduct material as defined in Section 11e(2) of the Act (mill tailings or wastes), source material (uranium and thorium), special nuclear material (uranium 233, uranium 235 and plutonium) in quantities not sufficient to form a critical mass and permanent disposal of low-level waste containing one or more of the materials stated above but not including mill tailings.

2. An agreement may be effected between a State and NRC: (1) upon certification by the Governor that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement and the State desires to assume regulatory responsibility for such materials; and (2) after a finding by the Commission that the State program is in accordance with the requirements of subsection o of section 274 and in all other respects compatible with the Commission's program for the regulation of such materials, and is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement. It is also necessary that the State have enabling legislation authorizing its Governor to enter into such an agreement.

3. The original criteria were published on March 24, 1961 (26 FR 2537) after discussions with various State officials and other State representatives, to provide guidance and assistance to the States and the AEC (now NRC) in developing a regulatory program which would be compatible with that of the NRC. The criteria were circulated among States, Federal agencies, labor and industry, and other interested groups for comment.

4. The criteria require that the State authority consider the total accumulated occupational radiation exposure of individuals. To facilitate such an approach, it is the view of the NRC that an overall radiation protection program is desirable. The maximum scope of

[[Page 7541]]

each State's radiation protection program is not, however, a necessary or appropriate subject for coverage in the criteria. Consequently, the criteria are silent on the question of whether a State should have a total regulatory program covering all sources of radiation, including those not subject to control by the NRC under the Atomic Energy Act, such as x-rays, radium, accelerators, etc.

5. These revised criteria provide for entering into an agreement for a separate category of materials, namely, low-level waste material in permanent disposal facilities. They also provide new criteria for States wishing to continue regulating uranium and thorium processing and the wastes resulting therefrom under the provisions of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604) after November 8, 1981. The revised criteria also contain a number of editorial changes such as changing AEC to NRC where appropriate to conform to present practice and law.

6. Inquiries about details of the criteria or other aspects of the NRC Federal-State Relations Program should be addressed to the Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Criteria [FN1]

FN1 The criteria were first adopted in February 1961 (26 FR 2537, March 24, 1961, and amended in November 1965 (30 FR 15044, December 4, 1965). Minor editorial changes were made in June 1968 to reflect the authority of the U.S. Department of Transportation and Organization change in NCRP.

Objectives

1. Protection. A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

Radiation Protection Standards [FN2]

FN2 Suggested State regulations and State legislation will give content to all criteria enunciated.

2. Standards. The State regulatory program shall adopt a set of standards for protection against radiation, which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

3. Uniformity in Radiation Standards. It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by Part 20 of the NRC regulations based on officially approved radiation protection guides.

4. Total Occupational Radiation Exposure. The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

5. Surveys, Monitoring. Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

6. Labels, Signs, Symbols. It is desirable to achieve uniformity in labels, signs and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

7. Instruction. Persons working in or frequenting restricted areas [FN3] shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, section 19.16 and to be represented during inspections as specified in section 19.14 of 10 CFR 19.

FN3 "Restricted area" means any area access to which is controlled by the licensee for the purpose of radiation protection of individuals from exposure to radiation and radioactive materials.

"Restricted area" shall not include any area used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

8. Storage. Licensed radioactive material in storage shall be secured against unauthorized removal.

9. Waste Disposal. The standards for the disposal of radioactive materials into the air, water, and sewers, and burial in the soil shall be in accordance with Part 20. Holders of radioactive material desiring to release or dispose of quantities in excess of the prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

10. Regulations Governing Shipment of Radioactive Materials. The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.

11. Records and Reports. The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

12. Additional Requirements and Exemptions. Consistent with the overall criteria here enumerated and to accommodate special cases or circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

Prior Evaluation of Uses of Radioactive Materials

13. Prior Evaluation of Hazards and Uses, Exceptions. In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups--those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

14. Evaluation Criteria. In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities

[[7542]]

and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. this guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

15. Human Use. The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum, experience in the use of radioisotopes or radiation.

Inspection

16. Purpose, Frequency. The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine, and to assist in obtaining, compliance with regulatory requirements.
Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

17. Inspections Compulsory. Licensees shall be under obligation by law to provide access to inspectors.

18. Notification of Results of Inspection. Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

Enforcement

19. Enforcement. Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials, the obtaining of injunctive relief, and the imposing of civil or criminal penalties.

Personnel

20. Qualifications of Regulatory and Inspection Personnel. The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments--their selection, use and calibration--laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State

regulatory staff may need to be supplemented by consultants or other State agencies with expertise in geology, hydrology, water quality, radiobiology and engineering disciplines.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training-radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These persons should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

Special Nuclear Material, Source Material and Tritium

21. Conditions Applicable to Special Nuclear Material, Source Material and Tritium. Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material and tritium, and (2) periodic inventory data.

22. Special Nuclear Material Defined. Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium 233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of

such ratios for all of the kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

(This definition is subject to change by future Commission rule or regulation.)

Administration

23. State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:

a. Formulation of rules of general applicability;
b. Approving or denying applications for licenses or authorization to possess and use radioactive materials, and
c. Taking disciplinary actions against licensees.

Arrangements For Discontinuing NRC Jurisdiction

24. State Agency Designation. The State should indicate which agency or agencies will have authority for carrying on the program and should provide the NRC with a summary of that legal authority. There should be assurances against duplicate regulation and licensing by State and local authorities, and it may be desirable that there be a single or central regulatory authority.

25. Existing NRC Licenses and Pending Applications. In effecting the discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications, by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect, for an appropriate period of time under State law, existing NRC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier reexamination or termination of the license.

26. Relations With Federal Government and Other States. There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

27. Coverage, Amendments, Reciprocity. An agreement providing for discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State may relate to any one or more of the following categories of materials within the State, as contemplated by Public Law 86-373 and Public Law 95-604:
a. Byproduct materials as defined in section 11e(1) of the Act,
b. Byproduct materials as defined in section 11e(2) of the Act,
c. Source materials,

d. Special nuclear materials in quantities not sufficient to form a critical mass,
e. Low-level wastes in permanent disposal facilities, as defined by statute or Commission rules or regulations containing one or more of the materials stated in a, c, and d above but not including byproduct material as defined in Section 11e(2) of the Act;
but must relate to the whole of such category or categories and not to a part of any category. [FN4] If less than the five categories are included in any discontinuance of jurisdiction, discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State of the others may be accomplished subsequently by an amendment or by a later agreement.

FN4 A State which does not wish to continue regulation of uranium and thorium processors and byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act as amended, after November 8, 1981 pursuant to Pub. L. 95- 604 may obtain authority over all source material licenses within the State except for uranium or thorium processors.

The agreement may incorporate by reference provisions of other documents, including these criteria, and the agreement shall be deemed to incorporate without specific reference the provisions of Pub. L. 86-373 and Pub. L. 95-604 and the related provisions of the Atomic Energy Act.
Arrangements should be made for the reciprocal recognition of State licenses and Federal licenses in connection with out-of-the-jurisdiction operations by a State or Federal licensee.

28. NRC and Department of Energy Contractors. The State should provide exemptions for NRC and DOE contractors which are substantially equivalent to the following exemptions:

a. Prime contractors performing work for the DOE at U.S. Government-owned or controlled sites;
b. Prime contractors performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;
c. Prime contractors using or operating nuclear reactors or other nuclear devices in a U.S. Government-owned vehicle or vessel; and
d. Any other prime contractor or subcontractor of DOE or NRC when the State and the NRC jointly determine (i) that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety and (ii) that the exemption of such contractor or subcontractor is authorized by law.

Additional Criteria for States Regulating Uranium or Thorium Processors and Wastes Resulting Therefrom After November 8, 1981

Statutes

29. State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements or Public Law 95-604, Uranium Mill Tailings Radiation Control Act (UMTRCA) as follows:

a. Authority to regulate the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.
b. That an adequate surety (under terms established by regulation) will be provided by the licensee to assure the completion of all requirements established by the (cite appropriate State agency) for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with the generation or disposal of such byproduct material.

c. If in the States' licensing and regulation of byproduct material or of any activity which produces byproduct material, the State collects funds from the licensee or its surety for long-term surveillance and maintenance of such material, the total amount of the funds collected by the State shall be transferred to the U.S. if custody of the byproduct material and its disposal site is transferred to the Federal Government upon termination of the State license. (See 10 CFR 150.32.) If no default has occurred and the reclamation or other bonded activity has been performed, funds for the purpose

[[Page 7544]]

are not to be transferred to the Federal Government. The funds collected by the State shall be sufficient to ensure compliance with the regulations the Commission establishes pursuant to Section 161X of the Atomic Energy Act.

d. In the issuances of licenses, an opportunity for written comments, public hearing (with transcript) and cross examination is required.

e. In the issuances of licenses, a written determination of the action to be taken based upon evidence presented during the public comment period and which is subject to judicial review is required.

f. A ban on major construction prior to completion of the aforementioned stipulations.

g. An opportunity shall be provided for public participation through written comments, public hearings, and judicial review of rules.

30. In the enactment of any supporting legislation, the State should take into account the reservations of authority to the U.S. in UMTRCA as stated in 10 CFR 150.15a and summarized by the following:

a. The establishment of minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of the byproduct material.

b. The determination that prior to the termination of a license, the licensee has complied with decontamination, decommissioning and reclamation standards, and ownership requirements for sites at which byproduct material is present.

c. The requirement that prior to termination of any license for byproduct material, as defined in Section 11e.(2), of the Atomic Energy Act or for any activity that results in the production of such material, title to such byproduct material and the disposal site be transferred to the Federal Government or State at the option of the State, provided such option is exercised prior to termination of the license.

d. The authority to require such monitoring, maintenance, and emergency measures after the license is terminated as necessary to protect the public health and safety for those materials and property for which the State has assumed custody pursuant to Pub. L. 95-604.

e. The authority to permit use of the surface or subsurface estate, or both of the land transferred to the United States or State pursuant under provision of the Uranium Mill Radiation Tailings Control Act.

f. The authority to exempt land ownership transfer requirements of Section 83(b)(1)(A).

31. It is preferable that State statutes contain the provisions of Section 6 of the Model Act, But the following may be accomplished by adoption of either procedures by regulation or technical criteria. In any case, authority for their implementation should be adequately supported by statute, regulation or case law as determined by the State Attorney General.

In the licensing and regulation of ores processed primarily for their source material content and for the disposal of byproduct material, procedures shall be established which provide a written

analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:[FN5]

FN5 It is strongly recommended that a 30-day period be provided for public review.

a. An assessment of the radiological and nonradiological public health impacts;
b. An assessment of any impact on any body of water or groundwater;
c. Consideration of alternatives to the licensed activities; and
d. Consideration of long-term impacts of licensed activities (see Item 36b. (1).

Regulations

32. State regulations should be reviewed for regulatory requirements, and where necessary *incorporate regulatory language which is equivalent to the extent practicable or more stringent* than regulations and standards adopted and enforced by the Commission, as required by Section 274o (see 10 CFR 40 and 10 CFR 150.31(b)).

Organizational Relationships Within the States

33. Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings.
a. Charts should be developed which show the management organization and lines of authority. This chart should define the specific lines of supervision from program management within the radiation control group and any other department within the State responsible for contributing to the regulation of uranium processing and disposal of tailings. When other State agencies or regional offices are utilized, the lines of communication and administrative control between the agencies and/or regions and the Program Director should be clearly drawn.
b. Those States that will utilize personnel from other State Departments or Federal agencies in preparing the environmental assessment should designate a lead agency for supervising and coordinating preparation of this environmental assessment. It is normally expected that the radiation control agency in Agreement States will be the lead agency. The basic premise is that the lead agency is required to prepare the environmental assessment. Utilization of an applicant's environmental report in lieu of a lead agency assessment of the proposed project is not adequate or appropriate. However, the lead agency may prepare an environmental assessment based upon an applicant's environmental report. Other credible information may be utilized by the State as long as such information is verified and documented by the State.
c. When a lead agency is designated, that agency should coordinate preparation of the statement. The other agencies involved should provide assistance with respect to their areas of jurisdiction and expertise. Factors relevant in obtaining assistance from other agencies include the applicable statutory authority, the time sequence in which the agencies become involved, the magnitude of their involvement, and relative expertise with respect to the project's environmental effects.
In order to bring an environmental assessment to a satisfactory conclusion, it is highly recommended that an initial scoping document be developed which clearly delineates the area and scope of work to be performed by each agency within a given time constraint.
d. For those areas in the environmental assessment where the State cannot identify a State agency having sufficient expertise to adequately evaluate the proposal or prepare an assessment, the State should have provisions for obtaining outside consulting services. In those instances where non- governmental consultants are utilized, procedures should be established to avoid conflict of interest consistent with State law and administrative procedures.

Medical consultants recognized for their expertise in emergency medical matters, such as the Oak Ridge and Hanford National Laboratories, relating to the intake or uranium and its diagnosis thereof associated with uranium mining and milling should be identified and available to the State for advice and direct assistance.

During the budget preparation, the State should allow for funding costs incurred by the use of consultants. In addition, consultants should be available for any emergencies which

[[Page 7545]]

may occur and for which their expertise would be needed immediately.

Personnel

34. Personnel needed in the processing of the license application can be identified or grouped according to the following skills: Technical; Administrative; and Support.

a. Administrative personnel are those persons who will provide internal guides, policy memoranda, reviews and managerial services necessary to assure completion of the licensing action. Support personnel are those persons who provide secretarial, clerical support, legal, and laboratory services. Technical personnel are those individuals who have the training and experience in radiation protection necessary to evaluate the engineering and radiological safety aspects of a uranium concentrator. Current indications are that 2 to 2.75 total professional person years' effort is needed to process a new conventional mill license, in situ license, or major renewal, to meet the requirements of UMTRCA. This number includes the effort for the environmental assessment and the in-plant safety review. It also includes the use of consultants. Heap leach applications may take less time and is expected to take 1.0 to 1.5 professional staff years' effort, depending on the circumstances encountered. Current indications are that the person years effort for support and legal services should be one secretary for approximately 2 conventional mills and 1/2 staff years for legal services for each noncontested mill case. The impact on environmental monitoring laboratory support services is difficult to estimate but should be added into the personnel requirements.

In addition, consideration should be given to various miscellaneous post- licensing ongoing activities including the issuance of minor amendments, inspections, and environmental surveillance. It is estimated that these activities may require about 0.5 to 1 person years effort per licensed facility per year, the latter being the case for a major facility. These figures do not include manpower for Title I activities of UMTRCA.

b. In evaluating license applications the State shall have access to necessary specialities, e.g., radiological safety, hydrology, geology and dam construction and operation.

In addition to the personnel qualifications listed in the "Guide for Evaluation of State Radiation Control Programs," Revision 3, February 1, 1980, the regulatory staff involved in the regulatory process (Radiation) should have additional training in Uranium Mill Health Physics and Environmental Assessments.

c. Personnel in agencies other than the lead agency are included in these total person year numbers. If other agencies are counted in these numbers then it shall be demonstrated that these personnel will be available on a routine and continuing basis to a degree claimed as necessary to successfully comply with the requirements of UMTRCA and these criteria. The arrangements for making such resources available shall be documented, such as an interagency memorandum of understanding and confirmed by budgetary cost centers.

Functions To Be Covered

35. The States should develop procedures for licensing, inspection, and preparation of environmental assessments.

a. Licensing

(1) Licensing evaluations or assessments should include in-plant radiological safety aspects in occupational or restricted areas and environmental impacts to populations in unrestricted areas from the plant.

(2) It is expected that the State will review, evaluate and provide documentation of these evaluations. Items which should be evaluated are:

(a) Proposed activities;
(b) Scope of proposed action;
(c) Specific activities to be conducted;
(d) Administrative procedures;
(e) Facility organization and radiological safety responsibilities, authorities, and personnel qualifications;
(f) Licensee audits and inspections;
(g) Radiation safety training programs for workers;
(h) Radiation safety program, control and monitoring;
(i) Restricted area markings and access control;
(j) At existing mills, review of monitoring data, exposure records, licensee audit and inspection records, and other records applicable to existing mills;
(k) Environmental monitoring;
(l) Emergency procedures, radiological;
(m) Product transportation; and
(n) Site and physical decommissioning procedures, other than tailings.
(o) Employee exposure data and bioassay programs.

b. Environmental Assessment

(1) The environmental evaluation should consist of a detailed and documented evaluation of the following items:

(a) Topography;
(b) Geology;
(c) Hydrology and water quality;
(d) Meteorology;
(e) Background radiation;
(f) Tailings retention system;
(g) Interim stabilization, reclamation, and Site Decommissioning Program;
(h) Radiological Dose Assessment;
(1) Source terms
(2) Exposure pathway
(3) Dose commitment to individuals
(4) Dose commitment to populations
(5) Evaluation of radiological impacts to the public to include a determination of compliance with State and Federal regulations and comparisons with background values
(6) Occupational dose
(7) Radiological impact to biota other than man
(8) Radiological monitoring programs, pre-occupational and operational
(i) Impacts to surface and groundwater, both quality and quantity;
(j) Environmental effects of accidents; and
(k) Evaluation of tailings management alternatives in terms of regulations.

(2) The States are encouraged to examine the need to expand the scope of the assessment into other areas such as:
(a) Ecology;
(b) Environmental effects of site preparation and facility construction on environment and biota;
(c) Environmental effects of use and discharge of chemicals and fuels; and
(d) Economic and social effects.
c. Inspections
(1) As a minimum, items which should be inspected or included during the inspection of a uranium mill should adhere to the items evaluated in the in- plant safety review. The principal items recommended for inspection are:
(a) Administration;
(b) Mill circuit, including any additions, deletions, or circuit changes;
(c) Accidents/Incidents;
(d) Part 19 or equivalent requirements of the State;
(e) Action taken on previous findings;
(f) A mill tour to determine compliance with regulations, and license conditions;
(g) Tailings waste management in accordance with regulations and license conditions (see NRC Reg. Guide 3.11.1);
(h) Records;
(i) Respiratory protection in accordance with license conditions or 10 CFR Part 20.
(j) Effluent and environmental monitoring;
(k) Training programs;
(l) Transportation and shipping;
(m) Internal review and audit by management;

[[Page 7546]]

(n) Exit interview; and
(o) Final written report documenting the results of the inspection and findings on each item.
(2) In addition, the inspector should perform the following:
(a) Independent surveys and sampling.
(3) Additional guidance is contained in appropriate NRC regulatory and inspection guides. A complete inspection should be performed at least once per year.
d. Operational Data Review
(1) In addition to the reporting requirements required by the regulations or license conditions, the licensee will submit in writing to the regulatory agency within 60 days after January 1 and July 1 of each year, reports specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation. This data shall be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation doses to the public.
(2) All data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time periods and frequency. The data will be reported in a manner that will allow the regulatory agency to conform the dose to receptors.

Instrumentation

36. The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.
a. The State will submit its list of instrumentation to the NRC for review. Arrangements should be made for calibrating such equipment.

b. Laboratory-type instrumentation should be available in a State agency or through a commercial service which has the capability for quantitative and qualitative analysis of radionuclides associated with natural uranium and its decay chain, primarily; U-238, Ra-226, Th-320, Pb-210, and Rn-222, in a variety of sample media such as will be encountered from an environmental sampling program.

Analysis and data reduction from laboratory analytical facilities should be available to the licensing and inspection authorities in a timely manner. Normally, the data should be available within 30 days of submittal. State acceptability of quality assurance (QA) programs should also be established for the analytical laboratories.

c. Arrangements should also be completed so that a large number of samples in a variety of sample media resulting from a major accident can be analyzed in a time frame that will allow timely decisions to be made regarding public health and safety.

d. Arrangements should be made to participate in the Environmental Protection Agency quality assurance program for laboratory performance.

Dated at Washington, D.C. this 16th day of January, 1981.
For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 81-2428 Filed 1-22-81; 8:45 am]
BILLING CODE 7590-01-M

[Federal Register: July 16, 1981 (Volume 46, Number 136)]
[Notices]
[Page 36969]

NUCLEAR REGULATORY COMMISSION

Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement; Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision of Criterion 29f.

SUMMARY: In a Federal Register document published on January 23, 1981 (46 FR 7540-7546, FR Doc. 81-2428), the NRC published Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement. As published at 46 FR 7544, Col. 1, Criterion 29f. which states "ban on major construction prior to completion of the aforementioned stipulations," is inaccurate. This document corrects the text of Criterion 29 by revising paragraph f. to read as follows:

"f. A ban on major construction prior to completion of the written environmental analysis stipulated in Criterion 31."

FOR FURTHER INFORMATION CONTACT:

John F. Kendig, Office of State Programs, Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 492-9891.

Dated at Washington, D.C. this 10th day of July 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-20861 Filed 7-15-81; 8:45 am]
BILLING CODE 7590-01-M

[Federal Register: July 21, 1983 (Volume 48, Number 141)]
[Notices]
[Page 33376-33377]

NUCLEAR REGULATORY COMMISSION

Discontinuance of NRC Authority and Assumption Thereof by States Through Agreement; Criteria for Guidance of States and NRC

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of policy: Revision.

SUMMARY: Criterion 9 of the NRC's Policy for Discontinuance of Authority dated January 23, 1981 appearing at 46 FR 7540-7546, deals with waste disposal. It states that the standards for disposal into air, water and sewer, and burial in soil shall be in accordance with 10 CFR Part 20. The Commission's regulation 10 CFR Part 61, which became effective December 27, 1982, provides licensing procedures, performance objectives, technical requirements and financial assurance requirements for the issuance of licenses by NRC for the land disposal of most wastes that are commonly referred to as low-level waste. In addition, the Nuclear Waste Policy Act of 1982 requires that the NRC and the Agreement States provide and approve certain stated financial arrangements prior to issuance of a license for low-level radioactive waste disposal or in the case of licenses in effect, prior to termination of such licenses. The financial arrangements are to cover completion of all requirements for the decontamination, decommissioning, site closure and reclamation of sites, structures and equipment used in conjunction with low-level waste disposal.

The Commission believes that States seeking an agreement pursuant to Section 274b of the Atomic Energy Act of 1954, as amended, to regulate land disposal of radioactive waste should establish standards for disposal which are in accord with the applicable technical definitions, performance objectives, technical requirements, and financial assurance requirements of 10 CFR Part 61 and the waste transfer and manifest system prescribed in 10 CFR Part 20. For the waste manifest system to function effectively on a national basis, it is necessary for all licensees, both NRC and Agreement State, to follow the same system. Thus, the Agreement States are expected to adopt and implement this system for their licensees.

Therefore, the NRC is revising Criterion 9 to include reference to the performance objectives, technical requirements and financial assurance requirements contained in Part 61 and the waste transfer and manifest system

[[Page 33377]]

contained in Part 20. The revision also satisfies the provisions of the Nuclear Waste Policy Act of 1982. Criterion 9 will be used in judging the adequacy and compatibility of that aspect of a State's regulatory program for regulating land disposal of low-level radioactive waste. No additional revisions to the criteria are considered necessary at this time to enter into an agreement with a State which includes authority to regulate low-level radioactive waste disposal.

For Agreement States currently regulating operating burial sites, NRC has been and will continue to work with the States to implement Part 61 provisions on a case-by-case basis, to the extent practicable. The waste transfer and manifest system, 10 CFR 20.311 becomes effective December 27, 1983. On an interim basis, arrangements are being made with the Agreement States regulating the existing burial sites to implement the waste classification system and waste transfer and manifest system through the burial site licensees.

FOR FURTHER INFORMATION CONTACT: Kathleen N. Schneider, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301-492-9893.

SUPPLEMENTARY INFORMATION: Criterion 9 is revised to read as follows:
* * * * *

9. Radioactive Waste Disposal.

(a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.
Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR 20.
The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.
(b) Land disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR Part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (section 151(a)(2), Pub. L. 97-425).
Commissioner Roberts, in disapproving, stated "Given the states' and the public's interest in all aspects of our waste disposal regulations and guidance, this revision should go out for public comments."
Dated at Washington, D.C. this 14th day of July, 1983.
For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-19710 Filed 7-20-83; 8:45 am]
BILLING CODE 7590-01-M

sample will be drawn from organizations filing a 990 tax return. An initial sample of roughly, 4,460 potential NPO R&D performers will be selected and sent a short screening questionnaire to establish eligibility for the main study. NPOs in this initial sample will be drawn from four strata:

1. NPOs which received Federal Funds for Science and Engineering (S&E) R&D between 1974 and 1994 based on NSF's Federal Support to Universities, Colleges, and Nonprofit Institutions (FS) survey and which were found in the 990 database.

2. NPOs in the 990 database which have National Taxonomy of Exempt Entities (NTEE) codes with a high likelihood of containing S&E R&D performers.

3. NPOs in the 990 database which are not in the FS or in the high likelihood NTEE codes.

4. NPOs in NSF's 1973 survey, all nonprofit-administered Federally Funded Research and Development Centers, and others to be included with certainty.

Depending on stratum, unweighted response rates of 80 to 90 percent are anticipated. Also depending on stratum, from 60 to 90 percent of the participating organizations are expected to be eligible. These approximately 2,360 organizations will be sent a main questionnaire that is expected to yield a final working sample size of about 2,100.

The R&D funders sample will be drawn from both 990PF tax returns for private foundations and 990 returns for public charities. As with the performers, a sample of potential NPO R&D funders will be selected to receive a short screening questionnaire to establish eligibility (N=700). Of these, 90 percent are expected to participate and 90 percent of these are expected to be eligible to participate. The roughly 560 eligible organizations will be sent a main questionnaire that is expected to yield a total working sample of 500.

To minimize burden on small entities and to make sure that a high proportion of the nonprofit sector's R&D funding and performance is captured, the sample will be designed with probabilities proportional to size. Thus, a large NPO has a higher probability of being selected than a small NPO has. This method is justified because large NPOs are more likely to perform R&D than small NPOs are. Size will be determined by budgets, assets, or awards.

The main questionnaires will be distributed in hardcopy and via the World Wide Web. To minimize burden, the world Wide Web questionnaires will be computer-assisted to ease user input, provide automatic totals of numerical information and aid users in error correction. Security procedures will minimize the risk of unwanted disclosure over the Internet. Definitions of key survey terms have been made consistent with OMB Circulars A–122 and A–133 to minimize potential confusion and unnecessary effort by survey respondents.

Information being collected is not considered to be sensitive. In general, assurances of data confidentiality will not be provided to respondents to the NSF Survey of Research and Development Funding and Performance by Nonprofit Organizations. The utility of the data will be increased by allowing access to collected data. Results of pretesting and discussions with possible respondents have suggested this approach for handling confidentiality.

Use of the Information. The purpose of this study is to collect data about R&D funding and performance by nonprofit organizations. The NSF will publish a separate report of the findings and also include them in other NSF compilations such as National Patterns of R&D Resources and Science and Engineering Indicators. A public release file of collected data will be made available to researchers on the World Wide Web. The results of the survey will help policy makers in decisions on R&D funding, regulations, and reporting guidelines.

Burden on the Public. The Foundation estimates that a total annual reporting and recordkeeping burden of 27,056 hours will result from the collection of information. The calculation is:

	Hours
4,460 performers × 1 screening questionnaire × 12.5 minutes = ...	930
2,360 performers × 1 survey questionnaire × 10.5 hours = ...	24,780
700 funders × 1 screening questionnaire × 12.5 minutes = ...	146
560 funders × 1 shorter questionnaire × 2 hours = ...	1,120
Total	27,056

Dated: August 27, 1997.

Gail A. McHenry,

Reports Clearance Officer.

[FR Doc. 97–23365 Filed 8–27–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Statement of Principles and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statements.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing two final policy statements: the "Statement of Principles and Policy for the Agreement State Program," and "Policy Statement on Adequacy and Compatibility of Agreement State Programs."

EFFECTIVE DATE: September 3, 1997.

ADDRESSES: Documents referenced in this notice are available for inspection in the Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC, between 7:45 am and 4:15 pm.

FOR FURTHER INFORMATION CONTACT: Ms. Cardelia Maupin, Sr. Project Manager, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–2312.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statement of Principles and Policy for the Agreement State Program

On August 25, 1993, the Commission requested the NRC staff to recommend improvements to the NRC's Agreement State Program to assure adequate protection of public health and safety. The draft Policy Statement was published in the **Federal Register** on August 5, 1994 (59 FR 40058). At the Commission's request, the public comment period scheduled to end on October 4, 1994, was extended to December 19, 1994 (59 FR 52316).

A final Policy Statement was prepared based on the public comments, other activities and issues before the Commission, e.g., the "Policy Statement on Adequacy and Compatibility of Agreement State Programs," issues discussed at public briefings of the Commission by the Organization of Agreement States (OAS), and the Commission's deliberations on the Integrated Materials Performance Evaluation Program. On May 5, 1995, the NRC staff submitted to the Commission the "Final Statement of Principles and Policy for the Agreement State Program" and "Procedures for Suspension and Termination of an Agreement State Program" (SECY 95–115) that contained the full analysis of

comments. By Staff Requirements Memorandum dated June 29, 1995, the Commission provided comments on the Statement of Principles and Policy for the Agreement State Program and directed staff to develop procedures for placing an Agreement State in probationary status and for implementing the phase-in of a new Agreement State program.

On October 3, 1996, the NRC staff submitted to the Commission the Statement of Principles and Policy for the Agreement State Program that had been modified as directed by the Commission (SECY 96–213). Further revisions were made to ensure consistency with the revised Policy Statement on Adequacy and Compatibility of Agreement State Programs. The procedures for suspension, emergency suspension and termination of agreements were finalized on April 25, 1996, and the procedure for placing an Agreement State in probationary status was finalized on July 3, 1996.

B. Statement on Adequacy and Compatibility of Agreement State Programs.

On July 21, 1994 (59 FR 37269), the Commission published in the **Federal Register**, for public comment, a draft Policy Statement regarding the adequacy of Agreement State programs to protect public health and safety and compatibility with NRC regulatory programs. The comment period for the draft Policy Statement was scheduled to expire on October 19, 1994, but was extended to December 19, 1994 (59 FR 52317). In addition, a public workshop was held on November 15, 1994 (59 FR 52321) to provide an opportunity for Agreement States and interested members of the public to provide comments on the draft Policy Statement.

A final "Policy Statement on Adequacy and Compatibility of Agreement State Program" was prepared based on the public comments and other activities and issues before the Commission. On May 3, 1995, the NRC staff submitted to the Commission the "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs" (SECY 95–112) that contained the full analysis of comments.

C. Status of the Policy Statements

The Commission approved both policy statements in principle with a Staff Requirements Memorandum dated June 29, 1995, but deferred their implementation until all implementing procedures were completed and approved by the Commission. On August 2, 1995 (60 FR 39463), the Commission published in the **Federal Register** the status of these two policy statements and a notice of their availability.

NRC staff also prepared draft implementing procedures for phased implementation of a new Agreement State program that contained language for a standard agreement (Management Directive 5.8 and its associated handbook). Comments on the draft implementing procedures for phased implementation of new agreements and the standard agreement were requested from the Agreement States on November 15, 1996. The complete analysis of these comments is included in "Final Recommendations on Policy Statements and Implementing Procedures for: Statement of Principles and Policy for the Agreement State Program and Policy Statement on Adequacy and Compatibility of Agreement State Programs" (SECY 97–054, dated March 3, 1997) that is available for inspection at the NRC Public Document Room. A summary of the comments appears with the text of the final policy statement in this notice.

In October 1995, a Working Group consisting of representatives of Agreement States and the NRC was formed to develop implementing procedures for the "Policy Statement on Adequacy and Compatibility of Agreement State Programs." The formation of this Working Group was announced in the **Federal Register** on December 1, 1995 (60 FR 61716). A notice announcing availability of the initial Working Group report (August 21, 1996) and implementing procedures was published in the **Federal Register** on September 19, 1996 (61 FR 49357). Comments also were requested specifically from Agreement States and panelists who participated in the November 15, 1994, public workshop. The analysis of State and public comments is part of the supplemental report of the Working Group dated January 27, 1997, that is available for inspection at the NRC Public Document Room. A summary of the comments appears with the text of the final policy statement in this notice.

II. Statement of Principles and Policy for the Agreement State Program

A. Comment Summary

Comment letters were received from twelve Agreement States on the implementing procedures for phased agreements (Management Directive 5.8). There was strong opposition from the Agreement States on the inclusion of mandatory phased agreements for states seeking Agreement State status. Staff analyzed the comments and agreed with the concerns associated with the use of phased agreements. Changes were made to the Policy Statement to remove the phased agreement concept and to include revisions offered by the Agreement States, as appropriate. The Policy Statement was also edited to conform it to the position that Agreement States have flexibility to impose legally binding requirements on its licensees through mechanisms other than rules.

The text of the final policy statement follows.

B. The Commission Policy

Statement of Principles and Policy for the Agreement State Program

1. *Purpose:* The purpose of this Statement of Principles and Policy for the Agreement State Program is to clearly describe the respective roles and responsibilities of the U.S. Nuclear Regulatory Commission (NRC) and States in the administration of programs carried out under Section 274 of the Atomic Energy Act of 1954, as amended. Section 274 provides broad authority for the NRC to establish Federal and State cooperation in the administration of regulatory programs for the protection of public health and safety in the industrial, medical, and research uses of nuclear materials.

This Policy Statement addresses the Federal-State interaction under the Atomic Energy Act to: (1) Establish and maintain agreements with States under Section 274(b) that provide for discontinuance by the NRC, and the assumption by the State, of responsibility for administration of a regulatory program for the use of byproduct, source, and small quantities of special nuclear material; and (2) ensure that post-agreement interactions among the NRC and Agreement State radiation control programs are coordinated and compatible and that Agreement State programs continue to provide adequate protection of public health and safety.

This Policy Statement establishes principles, objectives, and goals that the Commission expects will be reflected in the implementing guidance and programs of the NRC and Agreement States to meet their respective program responsibilities and that should be achieved in the administration of these programs.

This Policy Statement is intended solely as guidance for the Commission and the Agreement States in the implementation of the Agreement State program. This Policy Statement does not itself impose legally binding

requirements on the Agreement States. In addition, nothing in this Policy Statement expands the legal authority of Agreement States beyond that already granted to them by Section 274 of the AEA and other relevant legal authority. Implementation procedures adopted pursuant to this Policy Statement shall be consistent with the legal authorities of the Commission and the Agreement States.

2. Statement of Legislative Intent: The Atomic Energy Act of 1954 did not specify a role for the States in regulating the use of nuclear materials. Many States were concerned as to what their responsibilities in this area might be and expressed interest in seeing that the boundaries of Federal and State authority were clearly defined. This need for clarification was particularly important in view of the fact that although the Federal government retained sole responsibility for protecting public health and safety from the radiation hazards of byproduct, source, and special nuclear material, the responsibility for protecting the public from the radiation hazards of other sources such as x-ray machines and radium had been borne for many years by the States.

Consequently, in 1959 Congress enacted Section 274 of the Atomic Energy Act to establish a statutory framework under which States could assume certain regulatory jurisdiction over byproduct, source, and special nuclear material in quantities less than a critical mass. The primary purpose of the legislation was to authorize the Commission to discontinue its regulatory authority over the use of these materials and for assumption of this authority by the States. The Commission retained regulatory authority over the licensing of certain facilities and activities such as nuclear reactors, larger quantities of special nuclear material, and the export and import of nuclear materials.

In considering the legislation, Congress recognized that the Federal government would need to assist the States to ensure that they developed the capability to exercise their regulatory authority in a competent and effective manner. Accordingly, the legislation authorized the Commission to provide training and other services to State officials and employees. However, in rendering this assistance, Congress did not intend that the Commission would provide any grants to a State for the administration of a State regulatory program. This was fully consistent with the objectives of Section 274 to qualify States to assume independent regulatory authority over certain defined areas of regulatory jurisdiction and to permit the Commission to discontinue its regulatory responsibilities in those areas.

In order to relinquish its authority to a particular State, the Commission must find that the program is compatible with the Commission's program for the regulation of radioactive materials and that the State program is adequate to protect public health and safety. In addition, the Commission has an obligation, pursuant to Section 274(j) of the Act, to review existing Agreement State programs to ensure continued adequacy and compatibility. Section 274(j) of the Act provides that the NRC may terminate or suspend all or part of its agreement with a State if the Commission finds that such termination is necessary to protect public health and safety or that the State has not complied with the provisions of Section 274(j). In these cases, the Commission must offer the State reasonable notice and opportunity for a hearing. In addition, the Commission may temporarily suspend all or part of an agreement in the case of an emergency situation.

C. Principles of Program Implementation

1. Good Regulation Principles

In 1991, the Commission adopted "Principles of Good Regulation" to serve as a guide to both agency decision making and to individual behavior as NRC employees. Adherence to these principles has helped to ensure that NRC's regulatory activities have been of the highest quality, appropriate, and consistent. The "Principles of Good Regulation" recognize that strong, vigilant management and a desire to improve performance are prerequisites for success, for both regulators and the regulated industry. The Commission believes that NRC's implementation of these principles has served the public, the Agreement States, and the regulated community well. The Commission further believes that such principles may be useful as a part of a common culture that NRC and the Agreement States share as co-regulators. Accordingly, the Commission encourages each Agreement State to adopt a similar set of principles for use in its own regulatory program.

Regulatory decisions and actions should be developed and implemented in an open and publicly credible manner and should be able to withstand scrutiny. Such scrutiny should be welcomed by the regulator. The regulator should be independent and impartial in its actions, and this should be clearly evident. Regulations and regulatory decisions should be based on assessments of the best available information from affected and interested individuals and organizations, as well as on the best available knowledge from research and operational experience. Significant decisions, for example, a change in enforcement policy, should be documented explaining the rationale for such decisions. The public should have an opportunity for early involvement in significant regulatory program decisions. Where several effective alternatives are available, the alternative that best assures safety while considering differing views should be adopted, considering the resources needed to implement that alternative. Regulations should be necessary, and appropriate, to assure safety, and should be clear, coherent, logical, and practical. Regulatory actions should be fully consistent with regulations or other legally binding requirements and good public policy and should lead to stability and predictability in the planning and implementation of radiation control programs.

Failure to adhere to these principles of good regulation in the conduct of operations should be a sufficient reason for a regulatory program to self-initiate program changes that will result in needed improvements. All involved should welcome expressions of concern that indicate a program may not be operating in accordance with these principles and revise their program to more completely reflect these principles.

It is not intended that these principles of good regulation be established as formal criteria against which NRC and Agreement State programs would be assessed. Rather, the expectation is that these principles will be incorporated into the day-to-day operational fabric of NRC and Agreement State materials programs. These principles should be used in the formulation of policies and programs, implementation of those policies and programs, and assessments of program effectiveness. Application of these principles will ensure that complacency will be minimized, that adequate levels of protection of public health and safety are being provided, and that government employees tasked with the responsibility for these Federal and State regulatory programs serve the public in an effective, efficient, and responsive manner. These principles are primarily for the use of NRC and Agreement State materials program managers and staff in the self assessment of their respective programs and to use in the establishment of goals and objectives for the continual improvement of their respective

programs. Deficiencies identified during the conduct of NRC Region and Agreement State formal program performance reviews may indicate that the program is not adhering to these principles of good regulation. The organization being assessed should factor the need for these principles into its actions to address identified deficiencies.

2. Coherent Nationwide Effort

The mission of the NRC is to assure that civilian use of nuclear materials in the United States is carried out with adequate protection of public health and safety. NRC acknowledges its responsibility, shared with the Agreement States, to ensure that the regulatory programs of the NRC and the Agreement States collectively establish a coherent nationwide effort for the control of AEA materials. The basic elements of such regulatory programs include ability to ensure adequate protection of public health and safety, compatibility in areas of national interest, sufficient flexibility to accommodate local needs and conditions, ability to assess program performance on a consistent and systematic basis, and principles of good regulation in program administration.

Each of these elements is reflected and addressed in specific sections of this Policy Statement.

3. Adequate to Protect Public Health and Safety

NRC and the Agreement States have the responsibility to ensure adequate protection of public health and safety in the administration of their respective regulatory programs controlling the uses of AEA materials. Accordingly, NRC and Agreement State programs shall possess the requisite supporting legislative authority, implementing organization structure and procedures, and financial and human resources to effectively administer a radiation control program that ensures adequate protection of public health and safety.

4. Compatible in Areas of National Interest

NRC and the Agreement States have the responsibility to ensure that consistent and compatible radiation control programs are administered. Such radiation control programs should be based on a common regulatory philosophy including the common use of definitions and standards. They should be not only effective and cooperatively implemented by NRC and the Agreement States, but also should provide uniformity and consistency in program areas having national significance.

Such areas include those affecting interstate commerce, movement of goods and provision of services, and safety reviews for sealed source devices sold nationwide. Also necessary is the ability to communicate using a nationally accepted set of terms with common understanding, the ability to ensure an adequate level of protection of public health and safety that is consistent and stable across the nation, and the ability of NRC and each Agreement State to evaluate the effectiveness of the NRC and Agreement State programs for the regulation of agreement material with respect to protection of public health and safety.

5. Flexibility

With the exception of those compatibility areas where all programs should be essentially identical, to the extent possible, Agreement State radiation control programs for AEA materials should be provided with flexibility in program implementation to accommodate individual State preferences, State legislative direction, and local needs and conditions. However, the exercise of such flexibility should not preclude, or effectively preclude, a practice authorized by the Atomic Energy Act, and in the national interest. That is, a State would have the flexibility to design its own program, including incorporating more stringent, or similar, requirements provided that the requirements for adequacy are still met and compatibility is maintained, and the more stringent requirements do not preclude or effectively preclude a practice in the national interest without an adequate public health and safety or environmental basis related to radiation protection.

D. New Agreements

Section 274 of the Atomic Energy Act requires that once a decision to seek Agreement State status is made by the State, the Governor of that State must certify to the NRC that the State desires to assume regulatory responsibility and has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by the proposed agreement. This certification will be provided in a letter to the NRC that includes a number of documents in support of the certification. These documents include the State's enabling legislation, the radiation control regulations, a narrative description of the State program's policies, practices and procedures, and a proposed agreement.

The NRC has published criteria describing the necessary content these documents are required to cover. The NRC reviews the request and publishes notice of the proposed agreement in the **Federal Register** to provide an opportunity for public comment. After consideration of public comments, if the Commission determines that the State program is adequate and compatible, and approves the agreement, a formal agreement document is signed by the Governor and the Chairman of the NRC.

E. Program Assistance

NRC will offer training and other assistance to States, such as assistance in developing regulations and program descriptions to help individual States prepare for entrance into agreements and to help them prior to the assumption of regulatory authority. Following assumption of regulatory authority by a new Agreement State, to the extent permitted by resources, NRC can provide training and other assistance such as review of proposed regulatory changes to help States administer their regulatory responsibilities. NRC would also use its best efforts to provide specialized technical assistance to Agreement States to address unique or complex licensing, inspection, and enforcement issues. In areas where Agreement States have particular expertise or are in the best position to provide immediate assistance to the NRC, the Agreement States are encouraged to do so. In addition, NRC and Agreement States will keep each other informed about relevant aspects of their programs. NRC will provide an opportunity for Agreement States to have early and substantive involvement in rulemaking, policy, and guidance development activities. Agreement States should provide a similar opportunity to the NRC to make it aware of, and to provide the opportunity to review and comment on, proposed changes in regulations and significant changes to Agreement State programs, policies, and regulatory guidance.

If an Agreement State experiences difficulty in program administration, the Commission would use its best efforts to assist the State in maintaining the effectiveness of its radiation control program. Such assistance could address an immediate difficulty or a chronic difficulty affecting the State's ability to discharge its responsibility to continue to ensure adequate protection of public health and safety.

F. Performance Evaluation

Under Section 274 of the Atomic Energy Act of 1954, as amended, the

Commission retains authority for ensuring that Agreement State programs continue to provide adequate protection of public health and safety. In fulfilling this statutory responsibility, NRC will provide oversight of Agreement State radiation control programs to ensure that they are adequate and compatible prior to entrance into a Section 274(b) agreement and that they continue to be adequate and compatible after an agreement is effective. The Commission, in cooperation with the Agreement States, will establish and implement a performance evaluation program to provide NRC and Agreement State management with systematic, integrated, and reliable evaluations of the strengths and weaknesses of their respective radiation control programs and identification of areas needing improvement.

As a part of this performance evaluation process, the Commission will take any necessary actions to help ensure that Agreement State radiation control programs remain adequate and compatible. These actions include: (1) Periodic assessments of Agreement State radiation control programs against established review criteria; (2) provision of assistance to help address weaknesses or areas within an Agreement State radiation control program requiring improvement, to the extent permitted by NRC resources; (3) placing a State on a probationary status for serious program deficiencies that require heightened oversight; (4) temporary suspension of an agreement and reassertion of NRC regulatory authority in an emergency if an Agreement State program experiences any immediate program difficulties preventing the State from continuing to ensure adequate protection of public health and safety; and (5) suspension or termination of an agreement and reassertion of NRC regulatory authority if the Agreement State program experiences difficulties that jeopardize the State's ability to continue to ensure adequate protection of public health and safety or to continue to maintain a compatible program. The basis for NRC's actions will be based on a well defined and predictable process and a performance evaluation program that will be consistently and fairly applied.

G. Levels of Agreement State Program Review Findings

The following discussion outlines the nature of NRC findings regarding the NRC's Agreement State review process.

Finding 1—Adequate To Protect Public Health and Safety and (or not) Compatible

If the NRC finds that a State program has met all of the Agreement State program review criteria or that only minor deficiencies exist, the Commission would find that the State's program is adequate to protect public health and safety. If the NRC determines that a State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible. If the NRC determines that a State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States, i.e., creates conflicts, gaps, or duplication in regulation, the program would be found not compatible.

Finding 2—Adequate, but Needs Improvement and (or not) Compatible

If the NRC finds that a State program protects public health and safety, but is deficient in meeting some of the review criteria, the NRC may find that the State's program is adequate, but needs improvement. The NRC would consider in its determination plans that the State has to address any of the deficiencies noted during the review. In cases where less significant Agreement State deficiencies previously identified have been uncorrected for a significant period of time, NRC may also find that the program is adequate but in need of improvement. If the NRC determines that a State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible. If the NRC determines that a State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States, i.e., creates conflicts, gaps, or duplication in regulation, the program would be found not compatible.

Finding 3—Inadequate to Protect Public Health and Safety and (or not) Compatible

If the NRC finds that a State program is significantly deficient in some or all of the review criteria, the NRC would find that the State's program is not adequate to protect public health and safety. If the NRC determines that a State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible. If the NRC determines that a State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States, i.e., creates conflicts, gaps, or duplication in regulation, the program would be found not compatible.

H. NRC Actions as a Result of These Findings

The following discussion outlines the options available to the NRC as a result of making any of the above findings. The appropriate action will be determined on a case-by-case basis by NRC management.

Letters

In all cases, subsequent to an Agreement State program review, the findings would be recounted in a letter to senior level State management. In the event that the NRC finds that a State program is adequate and compatible, no further action would be required, except a response by the State to any suggestions or recommendations. In the case where minor deficiencies are noted or areas for improvement are identified, the State would be requested to describe their proposed corrective action. If the corrective action appears appropriate, no further NRC action is required. If additional clarification of the corrective actions is needed, additional correspondence may be necessary.

Follow-up Reviews

In the event that deficiencies are noted during the program review, NRC may increase the frequency of contacts with the State to keep abreast of developments and conduct onsite follow-up reviews to assure that progress is being made on correcting program deficiencies. If, during follow-up reviews, it is shown that the State has taken corrective actions, a letter finding the State adequate and compatible would be provided.

Probationary Status

There are three circumstances that can lead to an adequate but needs improvement or incompatible State program being placed in a probationary status: (1) There are cases in which program deficiencies may be serious enough to require immediate heightened oversight; (2) in other cases, Agreement State program deficiencies previously identified may have been uncorrected for a significant period of time; and (3) if the NRC determines that a State program has been late in adopting required compatibility program elements and significant disruption in the collective nationwide efforts to

regulate AEA materials has occurred. If the NRC was not confident that the State would address the program deficiencies in an expeditious and effective manner, the Commission would place the State program on probation.

As a result of placing a State program on probation, the NRC would communicate its findings to a higher level of State management. Notice of such probationary status would normally be addressed to the Governor of the State. Notice would also be published in the **Federal Register**. A copy of the letter to the Governor would be placed in the Public Document Room and a press release would be issued.

Once a State program is placed on probation, the NRC would heighten its oversight of the program. This would include obtaining commitments from the State in the form of a management plan to describe actions to be taken by the State to address the program deficiencies, including specific goals and milestones. The NRC would increase observation of State program activities under the agreement to assure adequate protection of public health and safety. If requested and in accordance with terms agreed to by the parties, the NRC would consider providing technical support for the maintenance of the regulatory program. The probationary period would last for a specified period of time. This period would not normally be more than one year, but could be extended based on extenuating circumstances. At the end of that time, if the State has not addressed the deficiencies, the NRC would institute suspension or termination proceedings.

Suspension

Section 274j of the Atomic Energy Act gives the Commission authority to suspend all or part of its agreement with a State if the suspension is required to protect public health and safety, or if the State has not complied with one or more of the requirements of Section 274 of the Act. In cases where the Commission finds that program deficiencies related to either adequacy or compatibility are such that the Commission must take action to protect public health and safety, or if the program has not complied with one or more of the requirements of Section 274 of the Act, the Commission would suspend all or part of its agreement with the State. In cases where a State has failed to respond in an acceptable manner during the probationary period, suspension would be considered. If the situation is not resolved, termination will be considered.

Before reaching a final decision on suspension, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed suspension. Notice of the proposed suspension will also be published in the **Federal Register**. Suspension, rather than termination, would be the preferred option in those cases where the State provides evidence that the program deficiencies are temporary and that the State is committed to correcting the deficiencies that led to the suspension.

In addition to the normal suspension authority, Section 274j(2) of the Act also addresses emergency situations and gives the Commission authority to temporarily suspend all or part of its agreement with a State without notice or hearing if an emergency situation exists requiring immediate action to protect public health and safety, and the State has failed to take necessary action within a reasonable time.

Termination

Section 274j of the Atomic Energy Act gives the Commission authority to terminate its agreement with a State if such termination is required to protect public health and safety, or if the State program has not complied with one or more of the requirements of Section 274 of the Act (e.g., is found to be not compatible with the Commission's program). When the Commission finds such significant program deficiencies, the Commission would institute proceedings to terminate its agreement with the State.

In cases where a State has failed to respond in an acceptable manner during the probationary period and there is no prospect for improvement, termination will be considered. Before reaching a final decision on termination, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed termination.

Also, notice of the proposed termination will be published in the **Federal Register**. There may be cases where termination will be considered even though the State program has not been placed on probation.

I. Program Funding

Currently, Section 274 does not allow federal funding for the administration of Agreement State radiation control programs. Section 274 permits the NRC to offer training and other assistance to a State in anticipation of entering into an Agreement with NRC, however, it is NRC policy not to fund the establishment of new Agreement State programs. Regarding training, given the importance in terms of public health and safety of having well trained radiation control program personnel, the NRC offers certain relevant training courses and notifies Agreement State personnel of their availability.

J. Regulatory Development

NRC and Agreement States will cooperate in the development of new regulations and policy. Agreement States will have early and substantive involvement in the development of new regulations affecting protection of public health and safety and of new policy affecting administration of the Agreement State program. Likewise, the NRC expects to have the States provide it with early and substantive involvement in the development of new Suggested State Regulations. NRC and Agreement States will keep each other informed about their individual regulatory requirements (e.g., regulations or license conditions) and the effectiveness of those regulatory requirements so that each has the opportunity to make use of proven regulatory approaches to further the effective and efficient use of resources.

K. Program Evolution

The NRC-Agreement State program is dynamic and the NRC and Agreement States will continue to jointly assess the NRC and Agreement State programs for the regulation of AEA materials to identify specific changes that should be considered based on experience or to further improve overall performance and effectiveness. The changes considered may include possible legislative changes. The program should also include the formal sharing of information and views such as briefings of the Commission by the Agreement States.

III. Policy Statement on Adequacy and Compatibility of Agreement State Programs

A. Comment Summary

Ten comment letters were received, one from the Organization of Agreement States, six Agreement State program directors, two industry organizations and one environmental group. The Joint NRC-Agreement State Working Group for Development of Implementing Procedures for the Final Policy Statement on Adequacy and Compatibility of Agreement State Programs analyzed the comments and changes were made to the Policy Statement (1) to add additional clarifying language for the terms "adequacy" and "compatibility" and the cooperative nature of the NRC—Agreement State relationship; (2) to

conform it to the position that Agreement States have flexibility with respect to the legally binding mechanism by which regulatory requirements needed for adequacy or compatibility are adopted; and (3) to simplify the language describing compatibility categories. Changes also were made in response to the June 30, 1997 Staff Requirements Memorandum. These changes (1) reflect that program elements for compatibility also impact public health and safety and may also be considered program elements for adequacy; (2) clarify the definition of basic radiation protection standard; and (3) clarify that States may not adopt program elements reserved exclusively to NRC. The implementing procedures were changed to reflect the final Policy Statement.

One Agreement State specifically commented that it did not believe that Section 274 of the AEA required compatibility of programs or program elements after an agreement is effective except for requirements pertaining to the Uranium Mill Tailings Radiation Control Act in section 274(o). This position also was reflected in the recommended changes to the Policy Statement submitted by the Organization of Agreement States.

The Commission does not agree with this interpretation of the AEA. Both Sections 274d.(2) and 274g. indicate that the Commission must find a State program to be compatible with that of NRC in order to enter into a Section 274b. agreement with the State. It is the Commission's view that, pursuant to Section 274, an Agreement State's program should be compatible with NRC's program for the duration of the Agreement for the following reasons:

Subsection 274g. authorizes and directs the Commission to cooperate with the States in the formulation of radiation protection standards "to assure that the State and Commission programs for the protection against hazards of radiation will be coordinated and compatible." This provision demonstrates Congress' intention that the compatibility between the NRC and Agreement State programs should be maintained on a continuing basis.

Section 274j.(1) calls on the Commission to suspend or terminate an Agreement State's program if "the State has not complied with one or more of the requirements" of the Section 274. The Commission believes that this phrase "one or more of the requirements," encompasses all requirements of Section 274, including the requirement for compatibility.

Under subsection 274d.(2), the Commission is authorized to enter into an agreement with a State if the Commission makes both requisite findings that the State program is compatible with the NRC's program and adequate to protect public health and safety. Absent a continuing compatibility requirement, an Agreement State could divert from having a compatible program the day after any agreement is signed with NRC. This would render the Commission's initial compatibility finding required by Section 274d.(2) meaningless.

Therefore, the Commission does not believe that Congress intended such meaning for the compatibility requirement and no changes were made to the Policy Statement in response to this comment.

The text of the final policy statement follows.

B. The Commission Policy

Policy Statement on Adequacy and Compatibility of Agreement State Programs

Purpose: Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, provides for a special Federal-State regulatory framework for the control of radioactive materials under which the NRC, by agreement with a State, relinquishes its authority in certain areas to the State government as long as the State program is adequate to protect public health and safety and compatible with the Commission's program. Section 274 further directs the Commission to periodically review State programs to ensure compliance with provisions of Section 274. This Policy Statement presents the Nuclear Regulatory Commission's policy for determining the adequacy and compatibility of Agreement State programs established pursuant to Section 274. This Policy Statement clarifies the meaning and use of the terms "adequate to protect public health and safety" and "compatible with the Commission's regulatory program" as applied to the Agreement State program. The Policy Statement also describes the general framework that will be used to identify those program elements [1] that Agreement State programs should implement to be adequate to protect public health and safety and to be compatible with the Commission's regulatory program. Finally, the Policy Statement reflects principles discussed in the Commission's Statement of Principles and Policy for the Agreement State Program which should be considered in conjunction with this Policy Statement.

This Policy Statement is solely guidance for the Commission and the Agreement States in the implementation of the Agreement State program. This Policy Statement does not itself impose legally binding requirements on the Agreement States. In addition, nothing in this Policy Statement expands the legal authority of Agreement States beyond that already granted to them by Section 274 of the Atomic Energy Act and other relevant legal authority. Implementation procedures adopted pursuant to this Policy Statement shall be consistent with the legal authorities of the Commission and the Agreement States.

Background: The terms "adequate" and "compatible" represent fundamental concepts in the Agreement State program authorized in 1959 by Section 274 of the Atomic Energy Act of 1954, as amended (AEA). Subsection 274d. states that the Commission shall enter into an Agreement under subsection b., discontinuing NRC's regulatory authority over certain materials in a State, provided that the State's program is adequate to protect public health and safety and compatible, in all other respects, with the Commission's regulatory program. Subsection 274g. authorizes and directs the Commission to cooperate with States in the formulation of standards to assure that State and Commission standards will be coordinated and compatible. Subsection 274j.(1) requires the Commission to review periodically the Agreements and actions taken by States under the Agreements to ensure compliance with provisions of Section 274. In other words, the Commission must review the actions taken by States under the Agreements to ensure that the programs continue to be adequate to protect public health and safety and compatible with the Commission's program.

Section 274 of the AEA requires that Agreement State programs be both "adequate to protect the public health and safety" and "compatible with the Commission's program." These separate findings are based on consideration of two different objectives. First, an Agreement State program should provide for an acceptable level of protection of public health and safety in an Agreement State (the "adequacy" component). Second, the Agreement State should ensure that its program serves an overall nationwide interest in radiation protection (the "compatibility" component). As discussed in more detail below, an "adequate" program should consist of those program elements necessary to maintain an acceptable level of protection of public health and safety within an Agreement State. A "compatible" program should consist of those program elements necessary to

[1] For the purposes of this Policy Statement, "program element" means any component or function of a radiation control regulatory program, including regulations and/or other legally binding requirements imposed on regulated persons, that contributes to implementation of that program.

meet a larger nationwide interest in radiation protection generally limited to areas of regulation involving radiation protection standards and activities with significant transboundary implications. Program elements for adequacy focus on the protection of public health and safety within a particular State, whereas program elements for compatibility focus on the impacts of an Agreement State's regulation of agreement material on a nationwide basis or its potential effects on other jurisdictions. Many program elements for compatibility also impact public health and safety; therefore, they may also be considered program elements for adequacy.

In identifying those program elements for adequate and compatible programs, or any changes thereto, the Commission will seek the advice of the Agreement States and will consider such advice in its final decision.

Adequacy: An Agreement State's radiation control program is adequate to protect public health and safety if administration of the program provides reasonable assurance of protection of public health and safety in regulating the use of source, byproduct, and small quantities of special nuclear material (hereinafter termed "agreement material") as identified by Section 274b. of the AEA. The level of protection afforded by the program elements of NRC's materials regulatory program is presumed to be that which is adequate to provide a reasonable assurance of protection of public health and safety. The overall level of protection of public health and safety provided by a State program should be equivalent to, or greater than, the level provided by the NRC program. To provide reasonable assurance of protection of public health and safety, an Agreement State program should contain five essential program elements, identified below, that the Commission will use to define the scope of its review of the program. The Commission also will consider, when appropriate, other program elements of an Agreement State which appear to affect the program's ability to provide reasonable assurance of public health and safety protection. Such consideration will occur only if concerns arise.

A. Legislation and Legal Authority

State statutes should:

Authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under an Agreement with the Commission;

Authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of protection of public health and safety;

Authorize the State to license, inspect, and enforce legally binding requirements such as regulations and licenses; and

Be otherwise consistent with Federal statutes, as appropriate, such as Pub. L. 95–604, The Uranium Mill Tailings Radiation Control Act (UMTRCA).

In addition, the State should have existing legally enforceable measures such as generally applicable rules, license provisions, or other appropriate measures, necessary to allow the State to ensure adequate protection of public health and safety in the regulation of agreement material in the State. Specifically, Agreement States should adopt a limited number of legally binding requirements based on those of NRC because of their particular health and safety significance. In adopting such requirements, Agreement States should adopt the essential objectives of those of the Commission.

B. Licensing

The State should conduct appropriate evaluations of proposed uses of agreement material, before issuing a license, to assure that the proposed licensee's operations can be conducted safely. Licenses should provide for reasonable assurance of public health and safety protection in relation to the licensed activities.

C. Inspection and Enforcement

The State should periodically conduct inspections of licensed activities involving agreement material to provide reasonable assurance of safe licensee operations and to determine compliance with its regulatory requirements. When determined to be necessary by the State, the State should take timely enforcement action against licensees through legal sanctions authorized by State statutes and regulations.

D. Personnel

The State should be staffed with a sufficient number of qualified personnel to implement its regulatory program for the control of agreement material.

E. Response to Events and Allegations

The State should respond to and conduct timely inspections or investigations of incidents, reported events, and allegations involving agreement material within the State's jurisdiction to provide reasonable assurance of protection of public health and safety.

Compatibility

An Agreement State radiation control program is compatible with the Commission's regulatory program when its program does not create conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. For purposes of compatibility, the State should address categories A, B, and C identified below:

A. Basic Radiation Protection Standards

For purposes of this Policy Statement, this category includes "basic radiation protection standards" meaning dose limits, concentration and release limits related to radiation protection in 10 CFR part 20 that are generally applicable, and the dose limits in 10 CFR 61.41.[2] Also included in this category are a limited number of definitions, signs, labels and scientific terms that are necessary for a common understanding of radiation protection principles among licensees, regulatory agencies, and members of the public. Such State standards should be essentially identical to those of the Commission, unless Federal statutes provide the State authority to adopt different standards. Basic radiation protection standards do not include constraints or other limits below the level associated with "adequate protection" that take into account permissible balancing considerations such as economic cost and other factors.

B. Program Elements with Significant Transboundary Implications

The Commission will limit this category to a small number of program elements (e.g., transportation regulations and sealed source and device registration certificates) that have significant transboundary implications. Agreement State program elements should be essentially identical to those of the Commission.

C. Other Commission Program Elements

These are other Commission program elements (e.g., reciprocity procedures) that are important for an Agreement State to have in order to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Such Agreement State program elements should embody the essential objective of the corresponding Commission program elements.

[2] The Commission will implement this category consistent with its earlier decision in the LLW area to allow Agreement States flexibility to establish pre-closure operational release limit objectives, ALARA goals or design objectives at such levels as the State may deem necessary or appropriate, as long as the level of protection of public health and safety is at least equivalent to that afforded by Commission requirements.

D. Program Elements not Required for Compatibility

An Agreement State has the flexibility to adopt and implement program elements based on those of the Commission (other than those identified in A, B, and C above) or other program elements within the State's jurisdiction that are not addressed by NRC.

All program elements of an Agreement State relating to agreement material should:

Be compatible with those of the Commission (i.e., should not create conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis);

Not preclude, or effectively preclude, a practice[3] in the national interest without an adequate public health and safety or environmental basis related to radiation protection; or

Not preclude, or effectively preclude, the ability of the Commission to evaluate the effectiveness of the NRC and Agreement State programs for agreement material with respect to protection of public health and safety.

E. Areas of Exclusive NRC Regulatory Authority

These are program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the AEA or provisions of Title 10 of the Code of Federal Regulations. However, an Agreement State may inform its licensees of certain of these NRC provisions through a mechanism that is appropriate under the State's administrative procedure laws as long as the State adopts these provisions solely for the purposes of notification, and does not exercise any regulatory authority pursuant to them.

Summary and Conclusions

To foster and enhance a coherent and consistent nationwide program for the regulation of agreement material, the Commission encourages Agreement States to adopt and implement program elements that are patterned after those adopted and implemented by the Commission. However, the fact that an Agreement State's program is compatible with that of the Commission does not affect that State's obligation to maintain an adequate program as described in this Policy Statement.

[3] "Practice" means a use, procedure, or activity associated with the application, possession, use, storage, or disposal of agreement material. The term "practice" is used in a broad and encompassing manner in this Policy Statement. The term encompasses both general activities involving use of radioactive materials such as industrial and medical uses and specific activities within a practice such as industrial radiography and brachytherapy.

By adopting the criteria for adequacy and compatibility as discussed in this Policy Statement the Commission will provide Agreement States a broad range of flexibility in the administration of individual programs. In doing so, the Commission allows Agreement States to fashion their programs so as to reflect specific State needs and preferences, recognizing the fact that Agreement States have responsibilities for radiation sources in addition to agreement material.

The Commission will minimize the number of NRC regulatory requirements that the Agreement States will be requested to adopt in an identical manner to maintain compatibility. At the same time, requirements in these compatibility categories will allow the Commission to ensure that an orderly pattern for the regulation of agreement material exists nationwide. The Commission believes that this approach achieves a proper balance between the need for Agreement State flexibility and the need for coordinated and compatible regulation of agreement material across the country.

* * * * *

Paperwork Reduction Act Statement

These final policy statements do not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0183.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Dated at Rockville, Md., this 27th day of August, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–23330 Filed 9–2–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Chemical Process Safety at Fuel Cycle Facilities; Availability of NUREG

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the completion and availability of NUREG–1601, "Chemical Process Safety at Fuel Cycle Facilities," dated July 1997.

ADDRESSES: Copies of NUREG–1601 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying, for a fee, in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Lidia Roché, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–7830.

SUPPLEMENTARY INFORMATION: NRC is announcing the availability of NUREG–1601, "Chemical Process Safety at Fuel Cycle Facilities." NUREG–1601 is the first report to address chemical safety issues affecting fuel cycle facilities as they relate to the performance of an integrated safety analysis (Integrated Safety Analysis Guidance Document (Draft NUREG–1513)). NUREG–1601 was developed in conformance with the Memorandum of Understanding, between NRC and the Occupational Safety and Health Administration, which gives NRC regulatory authority over chemicals hazards that may impact NRC-licensed nuclear material, including: (a) Chemical risks posed by radioactive materials; (b) interactions of chemicals with NRC-licensed nuclear material; and (c) plant conditions that may directly or indirectly affect the licensed nuclear material in an adverse manner.

NUREG–1601 provides broad guidance on chemical safety issues relevant to fuel cycle facilities. It addresses chemical safety issues, relevant to fuel cycle facilities, as they pertain to the performance of an integrated safety analysis. It explains to license holders and applicants a general

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Dale E. Klein, Chairman
Gregory B. Jaczko[1]
Peter B. Lyons
Kristine L. Svinicki

In the Matter of	)	
SHIELDALLOY METALLURGICAL CORP.	)	Docket No. 40-7102-MLA
(License Amendment Request for Decommissioning of the Newfield, New Jersey Facility)	)	

CLI-09-01

MEMORANDUM AND ORDER

This proceeding stems from Shieldalloy Metallurgical Corporation's (Shieldalloy or licensee) request for a license amendment to authorize the decommissioning of its Newfield Facility, located in Newfield, New Jersey.[2] In March 2007, the Atomic Safety and Licensing Board granted the New Jersey Department of Environmental Protection's (New Jersey) hearing request on the adequacy of Shieldalloy's proposed

[1] Section 201 of the Energy Reorganization Act, 42 U.S.C. Section 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Jaczko was not present when this item was affirmed. Accordingly the formal vote of the Commission was 3-0 in favor of the decision. Commissioner Jaczko offered a separate dissenting opinion which follows this decision.

[2] *See* Notice of Consideration of Amendment Request for Decommissioning for Shieldalloy Metallurgical Corp., Newfield, NJ and Opportunity to Request a Hearing, 71 Fed. Reg. 66,986 (Nov. 17, 2006).

Decommissioning Plan (Revision 1a).[3] More recently, the Board issued a Memorandum bringing certain issues to the Commission's attention.[4] Both the licensee and the NRC Staff sought leave from the Commission to respond to the Board's Memorandum.[5] The Commission allowed any party to respond.[6] The NRC Staff, the licensee, and New Jersey submitted briefs to the Commission.[7]

The Board's Memorandum raised essentially two concerns. The Board's initial concern was the extraordinarily slow pace of this proceeding. Originally, the Staff estimated that it would issue a final Safety Evaluation Report (SER) in January 2008, a Draft Environmental Impact Statement (DEIS) in March 2008, and a Final Environmental Impact Statement (FEIS) in October 2008.[8] According to the Staff's latest estimates, the DEIS will not be issued until October 2009, and the final SER and FEIS not until December 2009 and July 2010, respectively.[9] Given the circumstances, a hearing on the adequacy of Shieldalloy's Decommissioning Plan would not be held until well over 3 years after the Board granted New Jersey's hearing request, and over a decade since

---

[3] LBP-07-5, 65 NRC 341, 353-59 (2007). The Board admitted one contention, and deferred consideration of New Jersey's other contentions pending completion of the Staff's safety and environmental review. *See id.* at 359-62.

[4] *See* Memorandum (Bringing Matter of Concern to Commission's Attention), LBP-08-08, 67 NRC ___ (slip op. June 2, 2008)(Board Memorandum).

[5] *Shieldalloy's Unopposed Motion for Leave to File a Response to Licensing Board's Memorandum (Bringing Matter of Concern to Commission's Attention)*(June 10, 2008); *NRC Staff's Motion for Leave to Respond to LBP-08-08* (June 12, 2008).

[6] *See* Order (June 18, 2008)(unpublished).

[7] *NRC Staff's Response to LBP-08-08* (July 3, 2008)(Staff Response); *Shieldalloy's Response to Licensing Board's 'Memorandum (Bringing Matter of Concern to Commission's Attention)'*(July 3, 2008)(Shieldalloy Response); *State of New Jersey's Reply to the July 3, 2008 NRC Staff and Shieldalloy Submissions to the Commission* (July 10, 2008)(New Jersey Reply).

[8] *See* Board Memorandum, slip op. at 5.

[9] *See NRC Staff's Tenth Status Report* (December 5, 2008).

Shieldalloy ceased manufacturing operations (in 1998).[10] The current delay stems at least partially from Shieldalloy's intention to submit another revision of its Decommissioning Plan, to address many of the issues raised by the Staff in Requests for Additional Information (RAIs) transmitted in July 2007.[11]

The Board also expressed concern over whether there are adequate protective measures in place to protect nearby residents.[12] Recognizing its lack of authority to oversee or "inquire further" into the Staff's performance of its regulatory oversight responsibilities, or to "order some [interim] corrective measures," if any are called for, the Board referred its concerns to the Commission.[13]

Addressing the Board's Memorandum, the Staff responds that Shieldalloy already has "certain protective measures in place at the Newfield site that are essentially the same as those contemplated by the [Decommissioning Plan]."[14] These include security and access control measures, and a radiation monitoring program. The Staff also states that Shieldalloy has built a berm on the south side of the storage area at the Newfield site, to assure that rainwater runoff will not transport baghouse dust outside the

---

[10] *See* Board Memorandum, slip op. at 1, 6-8.

[11] *See* Board Memorandum, slip op. at 9; Staff Response at 12-15. As the Staff explains, a significant issue has been determining proper leach rate testing and sampling protocols to assess the leachability of slag and baghouse dust at the Newfield site. *See* Staff Response at 14-15. In its Ninth Status Report, the Staff indicated that Shieldalloy finalized its leach rate testing protocol in September 2008, and plans to take more than 50 additional samples from the nine slag and baghouse dust piles at the site. *See NRC Staff's Ninth Status Report* (Oct. 10, 2008) at 2.

Prior to accepting for technical review Shieldalloy's Decommissioning Plan Revision 1a, the Staff had rejected for docketing other earlier-submitted decommissioning plans for the Newfield site. The Staff rejected Revision 0 (submitted August 2002) and Revision 1 (submitted October 2005). *See* Board Memorandum, slip op. at 8-9.

[12] *See id.*, slip op. at 6-7, 11-12, 13.

[13] *Id.*, slip op. at 14.

[14] Staff Response at 15.

storage area.[15] The Staff stresses that there is "no evidence of any violation or potentially hazardous condition that would support ordering Shieldalloy to implement an engineered barrier [cover over the slag and baghouse dust] as an interim protective measure."[16] The Staff further stresses that it "continues to monitor and inspect the site," and that recent "inspections have not revealed any current threat to public health or safety associated with the Newfield site."[17]

Based upon the information provided to us, we have no reason to conclude that there are ongoing violations of NRC health and safety standards at the Newfield site. We note, further, that New Jersey concurs in the Staff's assessment that an interim protective barrier over the slag and baghouse dust at the site "may prolong and complicate decommissioning."[18]

New Jersey, however, urges the Staff (and Shieldalloy) to consider whether other interim measures are warranted to prevent any "contamination until the final decommissioning is completed."[19] In particular, New Jersey raises a concern about the Hudson Branch Creek, located near the Newfield facility. New Jersey claims, for example, that sampling results from the creek's surface water and soil sediment show elevated levels of uranium-238, thorium-232, and radium-226.[20] New Jersey requests an adequate characterization of this contamination, an investigation into the source of

---

[15] *Id.* at 17.

[16] *Id.* at 18.

[17] *Id.* at 6.

[18] New Jersey Reply at 8.

[19] *See id.*

[20] *See id.* at 7, and attached Exhibit 2 at 1-3.

contamination, a plan to prevent any ongoing contamination (if there is any), and remediation of existing contamination.[21]

While the Staff's brief does not address the Hudson Branch contamination, the Commission is aware that the Staff has issued Requests for Additional Information, calling on Shieldalloy to provide additional characterization data and other information on the contamination.[22] Apparently, the Staff has not yet resolved whether the NRC (or New Jersey) has jurisdiction over the radiological contamination in the Hudson Branch.[23] The NRC will assert jurisdiction if the contamination is attributable to Shieldalloy or another NRC licensee.[24] After reviewing Shieldalloy's responses and information from other sources, the Staff will determine whether the NRC has jurisdiction over the radiological contamination and, if so, whether and to what extent the contamination requires remediation.[25] We expect that the Staff will timely and thoroughly address these questions.

In addressing the creek contamination, New Jersey also refers to the berm constructed on the south side of the storage area as an interim protective measure. Because the berm "does not surround the entire pile" of materials, New Jersey seeks additional characterization of the soil and any surface water outside the fence-line, to assure that runoff to the north, east, and west sides of the pile does not pose an offsite

---

[21] New Jersey Reply at 9.

[22] *See, e.g.,* Letter from Keith McConnell, NRC, to Ms. Patricia Gardner, New Jersey Department of Environmental Protection (Aug.18, 2008)(McConnell Letter)(ADAMS ML082040537); Request for Additional Information, Cover Letter (July 5, 2007)(ADAMS ML071640267)(Cover Letter), and attached RAIs (ADAMS ML071640287) at 7-8.

[23] *See* McConnell Letter at 1.

[24] *See id.* at 2.

[25] *See id.*

contamination concern.[26] New Jersey states that there are materials other than slag, such as construction debris and contaminated soil, "that could potentially leave the site via runoff."[27] Whether additional data are needed regarding the effectiveness of the existing berm to deter potential offsite migration is a matter that the Staff should discuss with Shieldalloy and New Jersey.

We acknowledge the Board's concern with the extraordinary lag of time between Shieldalloy's cessation of operations and this adjudicatory proceeding on a decommissioning plan, and the continuing delays since the proceeding began. The Board made "clear" that it had no "criticism of anything that the NRC Staff has substantively done in the course of its technical review,"[28] and we likewise discern no failure in the Staff's technical review, which must consider and resolve all relevant safety and environmental issues. The Staff appears to be conducting a detailed, careful review, but to complete its review needs and has requested much additional information from Shieldalloy. We expect Shieldalloy to respond promptly and accurately to Staff inquiries. The Staff has advised Shieldalloy that the Staff may suspend or terminate its review of the Decommissioning Plan if Shieldalloy fails to provide "complete and high-quality responses."[29]

We also expect that, absent compelling circumstances, the Staff will accord sufficient priority and devote sufficient resources to meeting its current estimated safety and environmental review schedule. If in the course of its review, the Staff finds that any additional interim protective measures at the site are warranted, we expect it will take prompt appropriate action.

---

[26] New Jersey Reply at 7.

[27] *Id.*

[28] Board Memorandum at 15.

[29] *See* Cover Letter at 1.

Commissioner Jaczko, in his dissent, echoes the Board's concern with the delays in decommissioning the Newfield facility – a concern that we share. We also agree, as espoused in the dissent, that unrestricted release is the preferable method for terminating radioactive materials licenses.[30] But we differ with the dissent in that it addresses a generic matter that was not raised by the Board's Memorandum and offers a position on a question that is premature to address here. Many of the issues raised in the dissent are currently pending before the Board and may be dealt with in the context of the Board's adjudication, if appropriate, with the benefit of full briefing by the parties.

IT IS SO ORDERED.

For the Commission

(NRC SEAL)

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 27th day of January 2009.

[30] *See* NUREG-1757, Vol. 1, Rev. 2, Consolidated Decommissioning Guidance; Decommissioning Process for Materials Licensees (Sept. 2006) at M-1.

Commissioner Jaczko, dissenting:

I dissent from the Commission's Memorandum and Order. It is our job to make sure Shieldalloy fully cleans up this site. For two reasons, I think we may not be headed in the right direction to make sure this happens in a reasonable time. First, I believe that part of the generic guidance on decommissioning in NUREG-1757, with respect to long-term institutional control under 10 C.F.R. § 20.1403, is flawed and should be reconsidered. Should Shieldalloy follow that guidance and the Commission then find that is has to revise or withdraw it, significant delay in decommissioning the site could result. To avoid this result, the Commission could revisit that guidance now. Second, I am not convinced that the potential to achieve unrestricted release of Shieldalloy's Newfield site has been adequately explored. The following explains each of these two points in detail.

With respect to the generic guidance in NUREG-1757, the part of the guidance that applies the requirements in 10 C.F.R. Part 20 governing restricted release and in 10 C.F.R. § 40.42 governing license termination seems to me inconsistent with the text and intent of the regulations. *See* NUREG-1757, Vol. 1, Rev. 2, Consolidated Decommissioning Guidance; Decommissioning Process for Materials Licensees (Sept. 2006) (NUREG-1757). Specifically, the current guidance regarding the "possession only license/long term control" (POL/LTC) option appears to me logically flawed, and I believe we should generically revisit this guidance. In addition, if this flawed guidance is applied at Shieldalloy's Newfield site, significant additional delay to decommissioning this site could result. We would be remiss if did not act now to eliminate this potential source of additional delay.

The regulations that are the basis for my concern are as follows: In short, § 40.42(c) provides that, with respect to possession, a Part 40 license, such as that held by Shieldalloy, continues in effect after expiration until decommissioning is completed.

During that time, a licensee must limit actions to those related to decommissioning and control access to restricted areas until they are suitable for release. Simply stated, the licensee must meet Part 20 with respect to the materials remaining on the site.

Further, to decommission the site under Part 20, the licensee must meet the standards in § 20.1402 for unrestricted release of the site, *i.e.*, the amount of radioactive material left on the site is not dangerous, or the licensee must satisfy § 20.1403 or § 20.1404. Under § 20.1403, the site will be considered for restricted release if further reductions in residual radioactivity necessary to comply with the provisions of § 20.1402 would result in net public or environmental harm or need not be made because residual levels associated with the restricted conditions are as low as reasonably achievable (ALARA). Whether a site is suitable for unrestricted or restricted release, however, the license is terminated upon the completion of decommissioning in accordance with Part 20. Neither the licensee nor the NRC retains any continuing obligation or jurisdiction, respectively, with respect to the site, unless new information shows that the Part 20 criteria were not met and the residual radioactivity remaining on the site could result in a significant threat to public health and safety. *See* 10 C.F.R. § 20.1401(c); NUREG-1757, Appendix M at M-2 to M-3. The license is terminated even if the licensee decommissions the site in accordance with alternate decommissioning criteria pursuant to § 20.1404.

In contrast to the regulations described above, all of which are directed to license termination, the guidance in NUREG-1757 introduces the concept of a "new type of possession-only license [that] is referred to in this guidance as a long-term control (LTC) license[.]" NUREG-1757, Appendix M, M.3 at M-9. Such an LTC license (or possession-only license, POL) could remain outstanding indefinitely. *See id.* at M-14 ("The LTC license is not necessarily permanent"). Nowhere is such an LTC license

mentioned or even hinted at in the License Termination Rule in Part 20, or in the rule on the timeliness of decommissioning (as applicable in this proceeding, § 40.42).

In my view, issuance of an LTC license defeats the purpose of Subpart E of Part 20, "Radiological Criteria for License Termination." Moreover, there is no need to issue such a license, because the expired license held by the licensee continues to exist in accordance with § 40.42, and *already* requires the licensee to provide "institutional control" over the site in accordance with § 40.42(c) and Part 20. Under this existing license, the NRC can require any action that it might require under the LTC license.

In my view, we should just require licensees to comply with Part 20 so that their sites may be released (with or without restrictions) and their licenses terminated. If a particular licensee is unable to do so, then we should refer the site to some other governmental agency with the authority to clean it up or request legislation from Congress to address the situation. Depending on the circumstances, a "safe storage" option during which the licensee accumulates funds for site cleanup might also be an option. In the interim until the licensee or some other agency actually cleans up the site, of course, the licensee will control access and otherwise provide adequate protection to the public health and safety with respect to the materials remaining on site by satisfying Part 20 under its existing, though expired, license.

With respect to Shieldalloy's Newfield site, I offer no opinion on whether or not Shieldalloy can or will satisfy the requirements of § 20.1403 for restricted release, or on the adequacy of its proposed decommissioning plan in light of the current generic guidance in NUREG-1757. Should the Commission decide to request the staff to reexamine that generic guidance regarding restricted release and changes result, Shieldalloy will of course need to consider those changes, and may need to make conforming changes to its proposed decommissioning plan.

With respect to the second point, whether the potential to achieve unrestricted release of Shieldalloy's Newfield site has been adequately explored, I first note the purpose of 10 C.F.R. § 40.42, which governs the expiration and termination of licenses and decommissioning of source material sites, such as the Newfield site. The purpose of the rule in which the current form of that section was promulgated was to "require timely decontamination and decommissioning by nuclear material licensees." "Timeliness in Decommissioning of Materials Facilities," 59 Fed. Reg. 36,026 (July 15, 1994) (Timeliness Rule SOC). As the Timeliness Rule SOC states, "[t]he rule is intended to reduce the potential risk to public health and the environment from radioactive material remaining for long periods of time at [materials] facilities after licensed activities have ceased." *Id.*

In general, I agree with the Licensing Board in its opinion in LBP-08-08 that the decommissioning of the Shieldalloy Newfield site is taking an unduly long time. As the Board has pointed out, licensed activities at the Newfield site ceased in 1998, and the decommissioning process began then. I also recognize, as the staff notes, that numerous areas of the Newfield site have already been decommissioned. NRC Staff's Response To LBP-08-08 at 6 (July 3, 2008). Nonetheless, slag and "baghouse dust" accumulated on an eight-acre portion of the Newfield site, among other things, remain to be decommissioned. *Id.*

Much of the delay in addressing this slag and baghouse dust and completing the decommissioning of this site can be attributed to the licensee's inadequate proposals for decommissioning. As the Board indicated, decommissioning this site would seem to be a simple matter of removing waste offsite for disposal. It only becomes complicated when the licensee seeks to dispose of the waste onsite, with all the attendant characterization work and analyses necessary to show that such a proposal satisfies

Part 20. Our implementation of our decommissioning rules at the Newfield site has resulted in radioactive material remaining at the Newfield site for a prolonged time.

The preferred path for decommissioning in Part 20 is to achieve unrestricted release of a site. The rule states:

> A site will be considered acceptable for license termination under restricted conditions if:
>
> (a) The licensee can demonstrate that *further* reductions in residual radioactivity necessary to comply with the provisions of § 20.1402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA.

10 C.F.R. § 20.1403 (emphasis added). Section 20.1403 presumes that contaminated material has been removed offsite until the stated criteria are met, thus, offsite disposal is the first option. *See also,* "Radiological Criteria for License Termination," 62 Fed. Reg. 39,058, 39,065 (July 21, 1997). In the rulemaking promulgating this section, the Commission stated that it was taking "[a] tiered approach of unrestricted use and allowing restricted use if certain conditions are met[.]" *Id.* Moreover, § 40.42 is written in terms of "releasing" buildings or areas in accordance with NRC criteria. *See, e.g.*, 10 C.F.R. § 40.42(d).

Licensees do not get to choose between restricted and unrestricted release to suit their own purposes. Rather, the licensee should demonstrate that it will follow the "tiered" approach to decommissioning described above, and that release of the site will be restricted only if one or more of the conditions in § 20.1403(a) is met. The

unavailability of funding for decommissioning adequate to achieve unrestricted release of a site is not one of the conditions specified in § 20.1403(a). If none of the § 20.1403 conditions is met and funding is inadequate to achieve unrestricted release of the Newfield site, some other course of action, such as referral of the site to another agency for cleanup or licensee control and maintenance of the site until additional funds are accumulated, may be necessary. After all, If Shieldalloy invested the $8 million dollars it has in remaining funds, it can reasonably be assumed that those funds would eventually reach the $33 million dollar price tag envisioned in the application as necessary to remove the waste from the site. Even assuming only a 2% real rate of return (interest rate minus inflation), the $8 million would grow to $30 million in roughly 60 years. While that might be a longer time-frame than some would prefer, it is far shorter than a plan to leave the waste on site permanently.

In view of the above, the agency should be sure to explore all options for achieving unrestricted release of the entire Newfield site. Since it seems to me that we have not yet done so, I would have ordered the parties to provide us briefs on what efforts have been made to achieve unrestricted release of the site. After considering those briefs, we could have then provided direction to the Staff, if necessary. (I would *not* have requested the parties' views on whether the criteria in § 20.1403 justifying restricted release are met, as this issue will likely be the subject of the litigation pending before the Board, and is not yet ripe for us to consider.)

In sum, I believe we would be remiss in not directing the staff to explore all options aimed at achieving unrestricted release of the entire Newfield site. Because I believe the staff's current direction in entertaining the possibility of restricted release of the site is problematic with respect to long-term institutional control, and it seems to me that offsite disposal of some portion of the waste currently onsite might be accomplished, I would take a different approach.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
SHIELDALLOY METALLURGICAL CORP.	)	Docket No. 40-7102-MLA
	)	
(License Amendment Request for Decommissioning the Newfield, New Jersey Facility)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-09-01) have been served upon the following persons by electronic mail this date, followed by deposit of paper copies in the U.S. mail, first class, and NRC internal mail.

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

Administrative Judge
Alan S. Rosenthal, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rsnthl@verizon.net

Administrative Judge
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: richard.wardwell@nrc.gov

Administrative Judge
William Reed
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: whrcville@earthlink.net

Catherine, Marco, Esq.
Michael J. Clark, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: catherine.marco@nrc.gov; michael.clark@nrc.gov

Jay E. Silberg, Esq.
Matias F. Travieso-Diaz, Esq.
Robert B. Haemer, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1128
E-mail: jay.silberg@pillsburylaw.com; matias.travieso-diaz@pillsburylaw.com; robert.haemer@pillsburylaw.com

Stuart Rabner, Esq.
Attorney General of New Jersey
Andrew D. Reese, Esq.
Kenneth Elwell, Esq.
Deputy Attorneys General
New Jersey Office of the Attorney General
Department of Law and Public Safety
Division of Law
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093
E-mail: andrew.reese@dol.lps.state.nj.us
kenneth.elwell@dol.lps.state.nj.us

David R. Smith, Radiation Safety Officer
Shieldalloy Metallurgical Corporation
12 West Boulevard
P.O. Box 768
Newfield, NJ 08344-0768

[Original signed by Christine M. Pierpoint]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 27th day of January 2009