

NARM Waiver Expiration on August 7, 2009 Impact on New Jersey Agreement with a Later Effective Date

Background

- Provision for Waiver in EPA Act
- Authorized the Commission to issue waiver of the requirements in Section 651(e) to any entity with respect to NARM 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
- Commission determined that there was no basis to conclude that these materials would not continue to be used in a manner that is protective of public health and safety while the waiver is in effect.
 - Allowed continued use of NARM, especially for medical purposes, and to allow the States to continue to regulate NARM until the Commission could codify new regulations for these materials.
- Allowed NRC to develop appropriate regulations and in formulating a sound Transition Plan for implementation of these regulations.
- Provides an opportunity for non-Agreement States that currently do not have Agreement State regulatory programs under Section 274b. of the AEA to consider entering into an agreement with the NRC.

Transition Plan *continue filling in background/general info from FRN*

- Noticed in the *Federal Register* on 10/19/07, 72 FR 59157
- The Transition Plan purpose is to facilitate an orderly transition of regulatory authority with respect to the byproduct material defined in 11e.(3) and 11e.(4)
- As directed in the EPA Act, the plan *continue info from introduction of FRN*
 - Discusses the 3-phased approach, termination of the waiver at each phase, recognizing the time periods of 6 month for amendment and 12 month for new license requirement from the final NARM rule.
- NRC will cooperate with States for which the waiver will be terminated to identify users of the byproduct material within the States, and provide notifications to the users of the impending transition of authority.
- The Plan addresses non-Agreement States requesting an Agreement.
 - Specifically states in the FRN 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.**" (emphasis added)

Requirements

- Implementation period – NRC specifically allowed transitional period to submit license amendments or new license application for the newly added byproduct material.
 - Once the waiver expires under each phase of the Transition Plan, all persons that possess the new byproduct materials must be in compliance with NRC regulations.
 - This includes reporting and recordkeeping requirements.
 - 6 months to apply for needed amendments and 12 months to apply for a new license
 - Note that certain authorization statements for certain licenses are inclusive of byproduct materials and their uses so that an amendment may not be needed to specifically add NARM to the license.
- The NARM rule discusses the Transition Plan, stating that
 - “Options will be considered, on a case-by-case basis, to limit the impact of the transition of authority on affected users of the new byproduct material in the State.”

Normal Process for Transition to Agreement State

Summary of normal stuff – accelerate inspections, hold licensing actions, work closely with the State

- NRC typically accelerates inspections by about 3 months if possible so that the new Agreement State does not have a backlog of inspections to conduct at the beginning
- Licensing Actions are typically held for those coming in during the last 30 days prior to the effective date of the Agreement – unless they are of an urgent nature
- Events – we may have to inspect, may not need to and will put information in the license file.
 - We won't run out to inspect necessarily
 - Event reporting to NRC – if licensee calls NJ, NJ would tell them to call us.
 - If we have to follow-up, it will be treated like any other enforcement action
 - Events/enforcement occurring before the effective date of the Agreement stays with the regulatory agency under which the event occurred – to completion.
 - We'll need to coordinate more with NJ since they will be addressing any correction action or doing the evaluation during future inspections.

Proposal

Outline – meet our regulations, reporting, recordkeeping; ask as courtesy to report to State as well. Info. re: any enforcement, events pre and post both waiver expiration and normal transition

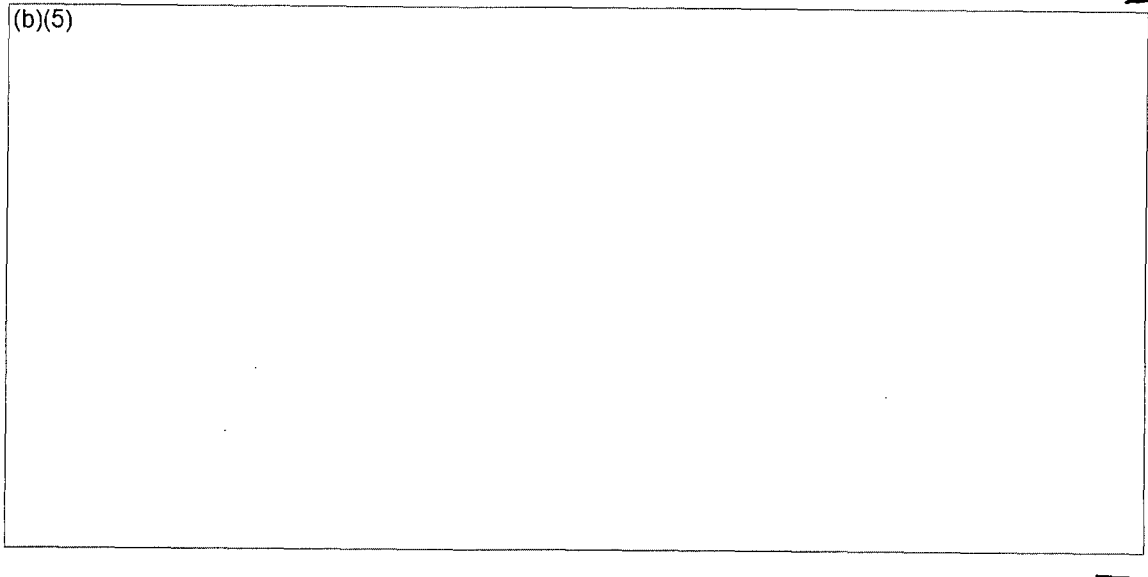
- As of August 8, 2009, NJ licensees will technically become NRC licensees
 - All persons that possess the new byproduct materials must be in compliance with NRC regulations.
 - This includes reporting and recordkeeping requirements.
 - Outline of NARM Waiver issues next page

NARM Waiver issues

1. As we do for all transitions, RI will be working closely with NJ regarding licensing actions – usually hold those coming in the last 30 days
 - a. RI will work with NJ on any actions that come in - if urgent action needed, RI will do to meet licensee's need
2. RI will be accelerating inspections for those due in October – December
 - a. Normal process
3. We are discussing with NJ the possibility of accelerating any NARM inspections due in the August – September timeframe so that none will be needed then.
 - a. Preliminary discussions –
 - i. Believe there won't be any due during that time period
 - ii. Believe they can accelerate if there are
4. Upon the expiration of the waiver, per the NARM rule, licensees in NJ will be in NRC jurisdiction and have to meet our regulations and reporting requirements
 - a. They will have 6 months to apply for needed amendments and 12 months to apply for a new license
 - b. We have not seen a huge rush within the 1st few weeks of phase 1 and 2 waiver terminations
 - c. Don't expect that to be different for phase 3
5. Fees – NRC licensees have already paid fees for FY 2009.
 - a. Fees are issued on anniversary date
 - b. CFO, once agreement is effective, issues final fee bill to remaining NRC licensees in NJ that have not received their statement for 2009.

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(b)(5)



*Ex 5
Attorney
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- i. What happens if there is a violation and we don't have a license issued? What about a violation of a NJ license condition?
 - (1) After 8/7/09, NJ licensees will have to meet NRC regulations and that will be enforceable.
 - (2) Technically, I believe NJ license is recognized by NRC. However, we don't plan to accelerate the physical transfer of license files.
 - (3) Won't be rushing out to do inspections of these facilities.
 - (4) If there are violations of license conditions, should be found by NJ staff during inspections. They have been inspecting NARM licensees all along.

- ii. Inspections during the 7 week "gap?" Could we look at 274i?
 - (1) Yes; but not worth the effort
 - (2) NRC will accelerate inspections as normal process so none will be due
 - (3) We've begun discussions with NJ re: the same for the NARM licensees
 - (4) If there is an event – we would do the enforcement
 - (a) However, there will be coordination with NJ since they will address corrective actions and/or follow-up in the future

- iii. Fees – general questions
 - (1) Fees will be assessed when apply for a license
 - (a) We're not expecting them to have to apply given the short time period and the time requirements provided in the Transition Plan
 - (2) There are only 200 NJ NARM licensees to whom this will apply. The remaining licensees also have NRC licenses and already pay fees.