Sollenberger, Dennis

From: Torre Taylor - FSME
Sent: Thursday, April 30, 2009 9:28 AM
To: Dennis Sollenberger; Donna Janda
Subject: NARM waiver expiration info rev 2 april 30 2009.doc
Attachments: NARM waiver expiration info rev 2 april 30 2009.doc

here's the (hopefully) final version for the narm waiver info (b)(5) (b)(5)

Ex. 5

Information in this record was deleted in accordance with the Freedom of Information Act. Exemptions 5
FOIA/PA 2010-0039

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

Background

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. 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.

The waiver allowed the continued use of NARM, especially for medical purposes, and allowed the States to continue to regulate NARM until the Commission could codify new regulations for these materials. It also provided an opportunity for non-Agreement States that currently do not have Agreement State regulatory programs under Section 274b. of the Atomic Energy Act (AEA), as amended, to consider entering into an Agreement with the NRC.

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 *Federal Register* 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 an Agreement State 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."

Once the waiver expires on August 7, 2009, all persons that possess NARM must be in compliance with NRC regulations. Licensees have 6 months to apply for necessary amendments and applicants have 12 months to apply for a new license. Many licensees already have authorizations on their license that are inclusive of byproduct materials and their uses so that an amendment may not be needed to specifically add NARM to the license.

Discussion

As part of the normal process for the transition from NRC authority to an Agreement State, pursuant to Section 274b of the AEA, Region I will develop a plan to facilitate an effective and efficient Agreement State transition process. The plan will provide information regarding license

transfers, completion of inspections, etc. NRC typically accelerates inspections so that the new Agreement State does not have a backlog of inspections to conduct at the beginning of the Agreement. Events occurring before the effective date of the Agreement remain with the regulatory agency under which the event occurred until completion. Likewise, any ongoing enforcement action will be completed by the regulatory agency under whose authority the event occurred.

NARM Waiver Expiration

NRC and New Jersey are working towards an effective date for the Agreement of no later than September 30, 2009. At this time, given where the review of the Agreement application is in the normal review process, it would be difficult to complete the Agreement prior to the expiration of the NARM waiver. Staff is already under an accelerated review process to complete the Agreement by no later than September 30, 2009. Additionally, there is a long lead time that is necessary to complete necessary inspections and to prepare about 500 license files for transfer. New Jersey staff is making similar preparations for the transition to becoming an Agreement State. Staff has been working with New Jersey to ensure a smooth transition during this interim time period and to minimize the impact on licensees located in New Jersey. Staff does not believe that this will be a major impact and that there will be no regulatory gap.

As of August 8, 2009, New Jersey's approximately 500 NARM licensees will be under NRC jurisdiction. All persons that possess byproduct material must be in compliance with NRC regulations, including reporting and recordkeeping requirements. New Jersey's regulations are compatible with NRC's. Therefore, even though New Jersey licensees will have to be in compliance with NRC regulations as of August 8, 2009, there will be minimal effect upon the effective date of the Agreement since the licensees will continue to meet essentially the same regulatory requirements.

NRC will accelerate inspections so that no inspections are due right after the effective date of the Agreement. Additionally, staff has spoken with New Jersey staff and they will also try to accelerate inspections of NARM licensees so that no inspections will be due during this interim time period. NRC will respond to any events that might occur during this interim period. As a courtesy, NRC staff will ask licensees located in New Jersey to report events to New Jersey as well as NRC. The Office of the General Counsel, by memorandum dated April 22, 2008, from Bradley Jones, Assistant General Counsel to Charles Miller, Director of the Office of Federal and State Materials and Environmental Management Programs, discusses the effect of relinquishing regulatory authority to Agreement States as it relates to events, enforcement, and allegations. This memorandum is attorney-client privilege; a copy can be provided if needed.

As mentioned previously, upon the expiration of the NARM waiver, licensees and applicants have 6 months and 12 months to submit necessary amendment requests and applications for a license, respectively. After the end of Phase 1 and Phase 2 of the Transition Plan in other States, NRC did not see a large number of licensing actions related to the NARM rule. Staff does not anticipate this to be any different for the expiration of the NARM waiver in New Jersey. NRC, as part of the normal process in transitioning New Jersey to an Agreement State, will not process any such licensing actions during the last 30 days prior to the effective date of the Agreement, unless there is an urgent need or a health and safety issue. Staff will be working closely with New Jersey regarding such licensing actions. New Jersey and NRC has agreed that the NARM licensees' files will stay in New Jersey and NRC will have access as needed during the interim period.

Conclusion

Based on the above discussion, staff believes that there will be 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 the above during numerous meetings to ensure a clear understanding of the jurisdiction during this interim time period, and to ensure an efficient transition.