

SMC Comments:

A. Compatibility Issues

1. The Regulations issued by NJDEP are Invalid.

The regulations submitted by NJ in their final application were promulgated by NJ in accordance with the NJ APA. Until overturned in NJ courts, NRC will proceed using them in our decision making.

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.

The differences identified by the commenter are all in the license termination rule portion of 10 CFR Part 20. Under NRC's compatibility categorization system, the license termination rule was determined to be Category C for compatibility. Category C rule must contain the essential objective of the rule but may be more stringent than the NRC rule. The NRC staff reviewed the proposed and final NJ regulations in accordance with the NRC policy and guidance and found them acceptable. Several other States have promulgated more stringent regulations in this area and NRC has also found them acceptable.

3. The NJ Program fails to Satisfy Compatibility Criterion 12.

As stated in response to 2 above, NJ may be more stringent than the NRC in relation to license termination regulations and this would include the implementing guidance as well. This information was available to the NRC staff in conducting its evaluation of the NJ program and the NRC staff was aware of the more stringent regulations and use of guidance in making its determination on compatibility and adequacy of the NJ program.

4. The NJ Program Fails to Satisfy Compatibility Criterion 17. (Allowing access at reasonable hour for official duties, inspections)

The NJ final application included the NJ responses to questions on the statutory basis for the regulatory requirement to allow access to inspector during normal working hours. NJ provided legal support (case law) to support the regulations as written. NRC found that supporting information adequate.

5. The NJ Program Fails to Satisfy Compatibility Criterion 23. (Fair and Impartial Administration)

The NJ regulatory process has been established in a fair and impartial way following the NJ APA. The licensing and enforcement process includes the opportunity for input from others. All licensees subject to a given regulation are treated in the same manner. NJ has promulgated regulations for other types of licensees which at this time there are none located in NJ. The number of licensees impacted by a rule does not affect the validity of the rule.

6. The NJ program Fails to Satisfy Criterion 25. (Existing NRC Licenses and Pending Applications)

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The NJ program will recognize the NRC licenses as NJ licenses until such time that the licenses are reissued or renewed by NJ. Licensing actions that are in process will be transferred to NJ for consideration after the effective date of the Agreement. Since NRC will be discontinuing Federal authority over the materials covered by the NJ Agreement, NRC would not have jurisdiction to continue licensing actions that were in progress at the time the Agreement goes into effect. All former NRC licensees in the classes of materials covered by the NJ Agreement will need to meet the NJ regulations upon the effective date of the Agreement as well as any pending actions transferred to NJ.

B. The New Jersey Radiation Protection Program is not Satisfactory Under the NRC Implementation Standards.

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