



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001**

May 9, 2017

Ms. Sandra Hinkel, Chief  
New York State Department of Environmental  
Conservation  
Division of Environmental Remediation  
Remedial Bureau A  
625 Broadway, 12<sup>th</sup> Floor  
Albany, NY 12233-7015

Dear Ms. Hinkel:

We have reviewed the proposed revisions to the New York State Department of Environmental Conservation (DEC) regulations 6 NYCRR Part 30, received by our office on March 29, 2017. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) rules and Regulation Amendment Tracking System Identification Numbers (RATS IDs) 1991-4, 1995-5, 1997-1, 1998-1, 1998-5, 2007-3, and 2008-1 as identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on May 8, 2017.

As a result of our review, we have three comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, a finding that the New York State DEC regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final New York State DEC regulations. However, we have determined that if your proposed regulations were adopted, incorporating our comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in NMSS Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes, and provide a copy to Division of Material Safety, State, Tribal, and Rulemaking Programs, NMSS.

The SRS Data Sheet summarizes our knowledge of the status of other New York State DEC regulations, as indicated. Please let us know if you note any inaccuracies, or have any comments on the information contained in the SRS Data Sheet. This letter, including the SRS Data Sheet, is posted on the NMSS State Communication Portal:  
<https://scp.nrc.gov/rulemaking.html>.

S. Hinkel

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If you have any questions regarding the comments, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact Michelle Beardsley, State Regulation Review Coordinator, at (267) 884-2305 ([michelle.beardsley@nrc.gov](mailto:michelle.beardsley@nrc.gov)) or Lizette Roldán-Otero, Ph.D. at (817) 200-1596 ([lizette.rolدان@nrc.gov](mailto:lizette.rolدان@nrc.gov)).

Sincerely,

**/RA Paul Michalak for/**

Joseph Nick, Acting Deputy Director  
Division of Material Safety, State, Tribal  
and Rulemaking Programs  
Office of Nuclear Material Safety  
and Safeguards

Enclosures:

1. Compatibility Comments
2. NYS DEC SRS Data Sheet

S. Hinkel

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SUBJECT: NYS DEC PROPOSED REGULATIONS TO RATS IDS 1991-4, 1995-5, 1997-1,  
1998-1, 1998-5, 2007-3, AND 2008-1

DISTRIBUTION: SP[05]  
DIR RF (17-36)  
DJanda, RSAO  
NYS DEC File

OFFICE	ASPB	ASPB	OGC	ASPB:BC	MSTR:DD
NAME	LRoldan-Otero	MBeardsley	J. Olmstead NLO via email	PMichalak	PMichalak for JNick
DATE	4/11/17	4/12/17	5/4/17	5/9/17	5/9/17

**ML170102B693**

**OFFICIAL RECORD COPY**

**Package ML17089A338**

**COMPATIBILITY COMMENTS ON NYS DEC PROPOSED REGULATIONS**

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	380-9.2	20.2202 30.50 40.60 70.50	1991-4	C	<p><b>Notification of Incidents</b></p> <p>NYS DEC regulations in 380-9.2(b) regarding the 24 hour notification of incidents, require the licensee to notify their agency by telephone “by the next business day” instead of “within 24 hours.” As written, this is less restrictive in that it could result in the licensee notifying their agency in more than 24 hours, e.g., if the event occurs over a weekend.</p> <p>NYS DEC needs to replace “next business day” for “within 24 hours” as indicated above in order to meet the Compatibility Category C designation assigned to 20.2202, 30.50, 40.60, and 70.50.</p> <p>NOTE: As these regulations are also under the purview of the NYS Department of Health, this finding will need to be communicated to, and coordinated with that State Agency.</p>
2	380-2.1(a) (50)	20.1003	1995-5	A	<p><b>Definition: Public dose</b></p> <p>NYS DEC’s definition of public dose omits the phrase, “from exposure to individuals administered radioactive material and released under [NYS DEC equivalent to 35.75]”,</p> <p>NYS DEC needs to add the phrase indicated above in order to meet the Compatibility Category A designation assigned to 20.1003 definition of “public dose.”</p>
3	380-10.8	30.10	1998-1	C	<p><b>Deliberate misconduct</b></p> <p>NYS DEC regulations:</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>1) omit the terms “employees of a licensee” and “employee of a contractor or subcontractor of any licensee” in 380-10.8(a); and</p> <p>2) omit the phrase “that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Department” in 380-10.8(b)(1).</p> <p>NYS DEC needs to make the changes indicated above in order to meet the Compatibility Category C designation assigned to 10 CFR 30.10.</p>

**STATE REGULATION STATUS**

State: New York Department of Environmental Conservation

Tracking Ticket Number: 17-36

Date: May 9, 2017

[ # 7 amendment(s) reviewed identified by a \* at the beginning of the equivalent NRC requirement.]

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
1991-1	Safety Requirements for Radiographic Equipment Part 34 55 FR 843 <b>(Superseded by 1997-5)</b>	01/10/1994	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 <b>(Superseded by 1997-5)</b>	none	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1991-3	Standards for Protection Against Radiation Part 20 56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183;	01/01/1994	Final	No Comments 11/06/1997	
*1991-4	Notification of Incidents Parts 20, 30, 31, 34, 39, 40, and 70 56 FR 64980;	10/15/1994	Proposed ML17089A343	Comment 05/09/2017 ML17089A338	
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 <b>(Superseded by 2002-2)</b>	01/27/1995	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
1992-2	Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions Parts 30 and 35 57 FR 45566	none	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
1993-1	Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites] Parts 30 and 40 58 FR 39628	10/25/1996	Not Required	Not Required	NYDEC does not have the authority for this requirement under its portion of the Agreement (ML081960629)
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Not Applicable <sup>1</sup>	Not Applicable	NYDEC does not have any licensees subject to these regulations. (See SECY-95-112)
1994-1	Self-Guarantee as an Additional Financial Mechanism Parts 30, 40, and 70 58 FR 68726; 59 FR 1618	none	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1994-2	Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards Part 40 59 FR 28220	07/01/1997	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
1994-3	Timeliness in Decommissioning Material Facilities Parts 30, 40, and 70 59 FR 36026	08/15/1997			
1995-1	Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use Parts 30, 32, and 35 59 FR 61767; 59 FR 65243; 60 FR 322	01/01/1998	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment Part 20 60 FR 7900	03/13/1998	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
1995-3	Low-Level Waste Shipment Manifest Information and Reporting Parts 20 and 61 60 FR 15649; 60 FR 25983	03/01/1998	Final ML083200009	No Comments 12/05/2008 ML083290560	
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 <b>(Superceded by 1997-5)</b>	06/30/1998	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
*1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19 and 20 60 FR 36038	08/14/1998	Proposed ML17089A343	Comment 05/09/2017 ML17089A338	
1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, and 70 60 FR 38235	11/24/1998	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
1995-7	Medical Administration of Radiation and Radioactive Materials Parts 20 and 35 60 FR 48623 <b>(Superceded by 2002-2 and 2005-2)</b>	10/20/1998	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
1996-1	Compatibility with the International Atomic Energy Agency Part 71 60 FR 50248; 61 FR 28724 <b>(Superceded by 2004-1)</b>	04/01/1999	Not Required	Not Required	NYDEC has adopted final regulations equivalent to RATS ID: 2004-1.



RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
1996-2	One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses Parts 30, 40, and 70 61 FR 1109	02/15/1999	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1996-3	Termination or Transfer of Licensed Activities: Record keeping Requirements Parts 20, 30, 40, 61, and 70 61 FR 24669	06/17/1999	Not Applicable <sup>i</sup>	Not Applicable	NYDEC does not have any licensees subject to these regulations. (See SECY-95-112)
*1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/9/2000	License Condition ML082210044  Proposed ML17089A343	No Comment ML082100009  No Comments 05/09/2017 ML17089A338	
1997-2	Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State Part 150 62 FR 1662	02/27/2000	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20 and 35 62 FR 4120	05/29/2000	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
1997-4	Fissile Material Shipments and Exemptions Part 71 62 FR 5907 <b>(Superceded by 2004-1)</b>	02/10/2000	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-97-078) NYDEC has adopted final regulations equivalent to RATS ID: 2004-1

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
1997-5	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations Parts 30, 34, 71, and 150 62 FR 28947	06/27/2000	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, and 70 62 FR 39057	08/20/2000			
1997-7	Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea Part 30 62 FR 63634	01/02/2001	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
*1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71, and 150 63 FR 1890; 63 FR 13773	02/12/2001	Proposed ML17089A343	Comment 05/09/2017 ML17089A338	
1998-2	Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees Parts 30, 40, and 70 63 FR 29535	07/01/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1998-3	License Term for Medical Use Licenses Part 35 63 FR 31604 <b>(Superseded by 2002-2)</b>	07/10/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-98-074)
1998-4	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations Part 34 63 FR 37059	07/09/2001	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
*1998-5	Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 32, 35, 36, and 39 63 FR 39477; 63 FR 45393	10/26/2001	Proposed ML17089A343	No Comments 05/09/2017 ML17089A338	
1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Final ML060330210	No Comments 02/28/2006 ML060720035	
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
1999-2	Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information Part 31 64 FR 42269	10/04/2002	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1999-3	Respiratory Protection and Controls to Restrict Internal Exposure Part 20 64 FR 54543; 64 FR 55524	02/02/2003	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2000-2	New Dosimetry Technology Parts 34, 36, and 39 65 FR 63750	01/08/2004	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31, and 32 65 FR 79162	02/16/2004	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2002-1	Revision of the Skin Dose Limit Part 20 67 FR 16298	04/05/2005	Not Applicable	Not Applicable	NYDEC does not need to implement this provision under its portion of the Agreement (ML14100A011).
2002-2	Medical Use of Byproduct Material Parts 20, 32, and 35 67 FR 20249	10/24/2005	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2003-1	Financial Assurance for Materials Licensees Parts 30, 40, and 70 68 FR 57327	12/03/2006	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	Final ML060330210	No Comments 02/28/2006 ML060720035	
2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35 70 FR 16336; 71 FR 1926	04/29/2008	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2005-3	Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128	12/01/2005	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2006-1	Minor Amendments Parts 20, 30, 32, 35, 40, and 70 71 FR 15005	03/27/2009	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2006-2	National Source Tracking System - Serialization Requirements Part 32 with reference to Part 20 Appendix E 71 FR 65685	02/06/2007	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2007-2	Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements Parts 30, 31, 32, and 150 72 FR 58473	12/17/2010	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
*2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, and 150 72 FR 55864	11/30/2010	Proposed ML17089A343	No Comments 05/09/2017 ML17089A338	
2007-4	Order Imposing Fingerprinting Requirements and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material NRC Order EA-07-305 72 FR 70901	06/05/2008	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
*2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19 and 20 72 FR 68043	02/15/2011	Proposed ML17089A343	No Comments 05/09/2017 ML17089A338	
2009-1	Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901	09/28/2012	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2011-1	Decommissioning Planning Parts 20, 30, 40, and 70 76 FR 35512	12/17/2015	ML17055A724	02/24/2017 ML17055A711	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2011-2	Licenses, Certifications, and Approvals for Materials Licensees Parts 30, 36, 39, 40, 70, and 150 76 FR 56951	11/14/2014	Not Applicable	Not Applicable	NYDEC does not need to implement this provision under its portion of the Agreement (ML14100A011).
2012-1	Change of Compatibility of 10 CFR 31.5 and 31.6 (See RATS ID: 2001-1 for Rule text) 77 FR 3640	01/25/2015	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2012-2	Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste Part 71 77 FR 34194	08/10/2015			
2012-3	Technical Corrections Parts 30, 34, 40, and 71 77 FR 39899	08/06/2015			NYDEC does not need to implement the Part 30, 34 and 40 changes of this requirement under its portion of the Agreement. However, the Part 71 provisions need to be addressed (ML14100A011).

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2012-4	Requirements for Distribution of Byproduct Material Parts 30, 31, 32, 40, and 70 77 FR 43666	10/23/2015	Not Applicable	Not Applicable	NYDEC does not need to implement this provision under its portion of the Agreement (ML14100A011).
2013-1	Physical Protection of Byproduct Material, 10 CFR Parts 20, 30, 32, 33, 34, 35, 36, 37, 39, and 71 78 FR 16922	03/19/2016	02/24/2017 ML17055B014	02/24/2017 ML17055A711	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2013-2	Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions Parts 30, 40, and 70 78 FR 32310	08/27/2016	Not Applicable	Not Applicable	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2015-1	Domestic Licensing of Special Nuclear Material – Written Reports and Clarifying Amendments Part 70 79 FR 57721, 80 FR 143	01/26/2018	ML17055A724	02/24/2017 ML17055A711	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2015-2	Safeguards Information - Modified Handling Categorization, Change for Materials Facilities Parts 30, 37, 73, and 150 79 FR 58664, 80 FR 3865	01/28/2018	ML17055A724	02/24/2017 ML17055A711	NYDEC does not have authority to regulate this material under its portion of the Agreement.
2015-3	Revisions to Transportation Safety Requirements and Harmonization with International Atomic Energy Agency Transportation Requirements Part 71 80 FR 33987	07/13/2018			
2015-4	Miscellaneous Corrections Parts 37 and 40 80 FR 45841	09/02/2018	ML17055A724	02/24/2017 ML17055A711	NYDEC does not have authority to regulate this material under its portion of the Agreement.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2015-5	Miscellaneous Corrections, Parts 19, 20, 30, 32, 37, 40, 61, 70, 71, and 150 80 FR 74974	12/31/2018	ML17055A724	02/24/2017 ML17055A711	NYDEC does not have authority to regulate this material under its portion of the Agreement.

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<sup>1</sup> IMPEP Team: verify that New York DEC does not have any licensees subject to these regulations during each review.