

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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April 13, 2018

Ms. Linda Howell, Acting Deputy Director
Division Materials Safety, State, Tribal, and Rulemaking Programs
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
T8-E18
Washington, D.C. 20555-0001

Dear Ms. Henderson:

Enclosed is a copy of the final revisions to 6 NYCRR Part 380, *Prevention and Control of Environmental Pollution by Radioactive Materials*, issued by the New York State Department of Environmental Conservation (DEC).

As you know, DEC is one of three agencies within the state that implements New York's Agreement State Program. DEC's authority is limited to the regulation of radioactive materials in the environment; DEC does not issue radioactive materials licenses. As such, DEC is only authorized to adopt those NRC rules, or portions of those rules, that are applicable to the regulation of radioactive material in the environment.

We request that NRC to address and correct the following issue: NRC's May 9, 2017 regulation review letter provided the results of its review of the proposed amendment to the 6 NYCRR Part 380 regulations. We believe that two of NRC's compatibility comments were in error. Attached is an outline of NRC's compatibility comments regarding the proposed amendment to Part 380, and DEC's response to those comments (indicating agreement or disagreement).

The final revisions to the text of the regulations are identified in the following manner: bracketed items are deletions, and underlined items are additions. Required changes correspond to the following equivalent amendments to NRC's regulations, as outlined on the table below:

RATS ID#	TITLE	10 CFR SECTION	PART 380 SECTION	NOTES
1991-4	Notification of Incidents	20.2202 (a) – (d)	380-9.2 Notification of Incidents	DEC does not need to adopt this requirement, as it is already covered by the state licensing agencies. Nevertheless, Notification of Incidents is still included; the notification threshold has been lowered to require reporting of incidents of interest to DEC.
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria	20.1003 Definitions	380-2.1 General definitions	The definitions for "members of the public" and "public dose" have been adopted. "Occupational dose" is not applicable
1997-1	Constraint	20.1101(d)	380-5.1(b) Constraint on Airborne Emissions	DEC currently implements the constraint rule by permit condition. Nevertheless, compatible provisions have been adopted.
1998-1	Deliberate Misconduct		380-10.8 Deliberate Misconduct	A provision has been adopted that will apply to permittees, applicants for permits, and contractors of any permittee or applicant, to meet the essential objectives of the NRC rule.

RATS ID#	TITLE	10 CFR SECTION	PART 380 SECTION	NOTES
1998-5	Minor corrections	20.1501	380-6.1 Surveys and Calibrations	Compatible requirements have been adopted, relating to effluent and environmental surveys.
1998-5	Minor corrections	20.2101(b) and (d)	380-8.1(b) General Provisions	Compatible requirements have been adopted relating to units.
2007-3	Requirements for Expanded Definition of Byproduct Material	Appendix B to Part 20	380-11.7 Table of Concentrations	O-15 and N-13 values have been added to the Tables of Concentrations.
2008-1	Total Effective Dose Equivalent	20.1003	380-2.1(a)(65) Total Effective Dose Equivalent	The revised definition of TEDE has been adopted.

We believe that adoption of these revisions to 6 NYCRR Part 380 satisfies the compatibility and health and safety categories established in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200 which are applicable to DEC's portion of New York's Agreement State program.

If you have any questions, please contact me at the address or phone number listed in the letterhead above, or e-mail me directly at sandra.hinkel@dec.ny.gov.

Sincerely,



Sandra Hinkel, Chief
Radiation Control Permit Section
New York State Department of Environmental
Conservation

Enclosure: Response to NRC Compatibility Comments
Final Amendment to 6 NYCRR Part 380

NYS DEC Response to NRC Compatibility Comments on Proposed Amendment to Part 380 Regulations

DEC's Portion of New York's Agreement State Program

The New York State Department of Environmental Conservation (DEC) is one of three agencies within the state that implements New York's Agreement State Program. DEC's authority is limited to the regulation of radioactive materials in the environment; DEC does not issue radioactive materials licenses. As such, DEC is only authorized to adopt those rules, or portions of those rules, that are applicable to the regulation of radioactive material in the environment.

Recent Communication Between DEC and NRC

On March 29, 2017 DEC submitted its proposed amendments to the 6 NYCRR Part 380 regulations, *Prevention and Control of Environmental Pollution by Radioactive Materials* to NRC for review and comment. On May 9, 2017 NRC provided DEC with comments on three provisions of DEC's proposed amendments to Part 380, and issued an updated State Regulatory Status (SRS) for DEC which reflected those comments. DEC does not agree with two of NRC's comments, as explained below.

DEC's Response to NRC Comments

Notification of Incidents (RATS 1991-4)

As stated by NRC in the previous SRS for DEC dated February 24, 2017, "NYDEC does not need to implement this provision under its portion of the Agreement." The reason DEC does not need to adopt this provision is because it is already covered by the State's licensing agencies, which captures the universe of regulated parties within the State. Nonetheless, DEC included a Notification of Incidents provision in the proposed (and final) amendment to Part 380; the notification threshold in the proposed amendment is significantly lower than NRC's thresholds, to require reporting of environmental release incidents of interest to DEC.

However, NRC's May 9, 2017 comment did not reflect the fact DEC does not need to adopt this provision. NRC's comment stated that DEC needed to replace its proposal to require notification of incidents "by the next business day" to "within 24 hours." DEC disagrees with NRC's comment, because this requirement does not need to be adopted by DEC at all. Even if DEC were required to adopt this provision (which is not the case), this is a Category C provision - the essential objectives of the program element 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. In addition, the notification threshold is significantly lower than the threshold in NRC's rule. On March 22, 2018, NRC revised the SRS for DEC to restate, "NYDEC does not need to implement this provision under its portion of the Agreement."

Definition: Public Dose (RATS 1995-5)

DEC agrees with NRC's comment regarding this provision and has added the phrase "from exposure to individuals administered radioactive material and released..." to the final rule as suggested by NRC.

Deliberate Misconduct (RATS 1998-1)

NRC made two comments regarding this provision. In its first comment, NRC stated that DEC's proposed rule omitted the terms "employees of a licensee" and "employees of a contractor or subcontractor." DEC disagrees with NRC's comment, because these terms are included in the proposed (and final) rule. Please see proposed Section 380-10.8(a) which states, "This section applies to the following persons and their *employees*" (emphasis added).

DEC agrees with NRC's second comment regarding this provision, and has added the phrase "that causes or would have caused, if not detected..." to the final rule as suggested by NRC.