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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

JUN 11 1980

Mr. Gene A. Christianson
Acting Administrator
North Dakota Department of Health
State Capitol Building
Bismarck, North Dakota 50501

Dear Mr. Christianson:

This confirms the discussion Mrs. Schneider held with you following our recent review of the North Dakota Department of Health radiation control program for agreement materials. The review covered the principal administrative and technical aspects of the Department's program. This included an examination of the program's funding and personnel resources; examination of the emergency response capabilities for agreement materials; and the status of the State's radiation control regulations. There was also a review of selected licensing, inspection and enforcement activities. In addition, we accompanied a State inspector during the inspection of a State licensee.

As a result of our review of the Department's program and the routine exchange of information between the Nuclear Regulatory Commission (NRC) and the Department, the staff believes that the program for regulation of agreement material is adequate to protect the public health and safety and compatible with NRC's program for the regulation of similar material.

We believe that improvements can be made in the program. The program's staff has reported that, as of May 1980, the number of overdue inspections was 19 and that only 16 inspections had been conducted during the review period. In 1979, 35 inspections had been performed and only 12 inspections were overdue. The program's staff attributed the backlog increase to difficulties in filling personnel vacancies. We understand there is no funding available at present for one vacant position, the result being a current staffing level of about 0.8 person years per 100 licenses.

We recommend the State consider actions which can be taken to fill the vacant position as soon as possible, and what actions can be taken to reduce the number of overdue inspections for the highest priority licenses.

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During the review, Mrs. Schneider discussed your view that the NRC should supplement the cost of the radiological health program. I must confirm our statement to you that there is no authority under the Atomic Energy Act to provide funds to the Agreement States to operate their programs. However, 11 Agreement States are charging fees for most of their licensees. Rhode Island's fee schedule is identical to that of NRC's. NRC charges fees in 24 States in which we retain jurisdiction. Thus, in 35 of the 50 States, fees are charged against licensees. We recommend the State consider adopting a similar fee program. At the request of the General Accounting Office, we have developed model State legislation for fees, and a copy is enclosed.

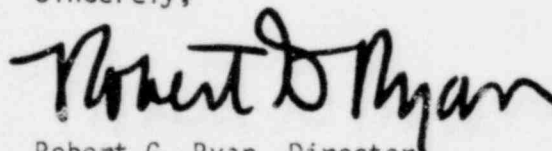
We discussed the State's procedures for handling escalated enforcement and understand that written procedures do not exist. We recommend that written procedures be established for handling escalated enforcement actions (orders, impoundments, revocation, hearings, etc.) and distributed to the appropriate members of the staff. Elements of suggested escalated Enforcement Action Procedures were sent to All Agreement States on January 14, 1980.

We noted that three recommendations made following last year's review had not been implemented. Discussions with the staff indicated that there was a breakdown in communications which contributed to this, and that our recommendations will be promptly implemented.

A letter to Mr. Mount regarding the technical aspects of the program is enclosed for your information. I am also enclosing a second copy of each letter which should be placed in the State Public Document Room, or otherwise be made available for public inspection.

I appreciate the courtesy and cooperation extended to Mrs. Schneider during the meeting with your staff. I would appreciate your review of these suggestions and would like to receive your comments on them.

Sincerely,



Robert G. Ryan, Director
Office of State Programs

Enclosures:
As stated

cc: (w/encls.)
NRC Public Document Room
State Public Document Room
(w/o encls.)
D. Mount

RADIATION USER FEES - DRAFT MODEL STATE ACT

In September, 1959, the Congress enacted what is commonly referred to as the "Agreement State Amendment" (Public Law 86-373) to the Atomic Energy Act of 1954. The purpose of this law is to provide for the gradual assumption by the states of certain federal authorities in the field of radiation hazards.

While the federal government exercised virtually exclusive jurisdiction over atomic energy matters following World War II, the states, in the exercise of their responsibility for the protection of the public health and safety, began developing regulatory programs affecting certain sources of ionizing radiation. Presently, the states have the responsibility to regulate health and safety hazards associated with X-ray machines, radioisotopes produced in particle accelerators and naturally occurring radioactive materials not subject to regulation by the United States Nuclear Regulatory Commission such as polonium and radium, and other radioactive ores prior to their removal from their place of deposit in nature. The importance of state activity is evidenced by the fact that even without an enlargement of state jurisdiction, the average individual will receive, from sources subject to state control, much the greater part of his total radiation exposure from artificial sources.

On October 11, 1974, the Energy Reorganization Act of 1974 was signed into law. This Act, which became effective January 19, 1975, abolished the Atomic Energy Commission and transferred that Commission's licensing and related regulatory functions to the newly established

Nuclear Regulatory Commission which began official operation on January 19, 1975.

Congress, recognizing the increasing activity and concern of the states in the regulating of sources of ionizing radiation, provided in Public Law 86-373 a means by which the states could assume certain regulatory powers. The act authorizes the discontinuance of federal regulatory authority and the assumption thereof by a state with respect to one or more of the following: (1) byproduct materials; (2) source materials; and (3) special nuclear materials in quantities not sufficient to form a critical mass. At the present time, the federal government retains jurisdiction with respect to: (1) the construction and operation of any production or utilization facility; (2) waste disposal at sea; (3) the transfer of possession and control of manufactured items; (4) waste disposal on land if the Commission deems licensing necessary; (5) disposal of high level wastes; and (6) export from or import into the United States of source, byproduct, special nuclear material or any production or utilization facility.

Other sections provide for federal-state cooperation in the development of radiation standards; for NRC-state agreements for the performance of inspections or other functions on a cooperative basis, and for the Commission to provide training and other assistance to state and local governments as the Commission deems appropriate.

The vehicle for accomplishing the jurisdictional transfer is an agreement between the NRC and the Governor of the state. In order to enter into such an agreement, Public Law 86-373 requires that the NRC find that the state regulatory program is compatible with that of the federal government and adequate to protect the public health and safety. The two basic elements of an effective state program are (1) a series of rules and regulations insuring the public health and safety and (2) an effective administrative structure for the promulgation and enforcement of such rules and regulations. The details of this program are specifically set forth in criteria developed by the NRC in cooperation with state officials and interested private groups.

For its part, the Committee on Suggested State Legislation proposed in the Program of Suggested State Legislation for 1957 that states provide for coordination of atomic development. This proposal, with some amendments, was carried again in Suggested State Legislation--
Program for 1959. The latter program also contained proposals, in some instances accompanied by draft bills, with respect to radiation protection, shoe-fitting X-rays or fluoroscopes, workmen's compensation laws and radiation coverage, and public liability of state and local licensees for atomic incidents. A supplement to the Program for 1959 and the Program for 1960 included an analysis of state workmen's compensation laws and their coverage of workers exposed to radiation hazards, along with suggested legislation to assist states in revising their laws to provide adequate protection. In its Program for 1961, the Committee provided a suggested State Radiation Control Act.

The suggested State Radiation Control Act contains a number of alternative administrative arrangements, one of which should meet the needs, legal requirements and organizational pattern of any state. In addition, it provides authority for the Governor to enter into an agreement with the federal government permitting the state to assume regulatory authority presently exercised by the NRC. Other provisions include legislative authorization for programs of licensing, inspection and record keeping. It should be added that the regulatory authority of the act is not limited to "Agreement materials" but extends to all sources of ionizing radiation. Thus, the model Act includes those sources presently under state jurisdiction as well as those over which, in the future, the federal government might desire to discontinue its regulatory responsibility.

In 1962, Kentucky became the first state to sign an agreement with the NRC. Twenty-five states have entered into agreements with the NRC under the provisions of Public Law 86-373. Enabling legislation has been adopted by all but 6 states.

In the ensuing years, concern has been expressed over assuring adequate funding of radiation control programs and to recover some portion of the costs from radiation users. In 1968, the former AEC promulgated regulations, subsequently amended, but still in effect, establishing fees to be charged for licensing services by the NRC as authorized under Title V of the Independent Offices Appropriation Act of 1952 (65 Stat. 290; 31 U.S.C. 483a) and provisions regarding their

payment. Six agreement states have established fees to be charged to persons for licensing or registration of radiation sources. In 1976, following an audit by the General Accounting Office (GAO) of the NRC agreement state program, GAO recommended NRC develop model legislation to assist states in establishing systems for collecting license fees.

Funds collected through fees charged to licensees and registrants can off-set, in part, the costs of a regulatory program for radiation users which would otherwise be financed out of general tax revenues. In agreement states, a fee system helps assure continuation of adequate funding of the existing radiation control program; in other states, establishment of a fee system can provide a fiscal basis for orderly assumption by the state of its responsibilities in radiation protection.

Existing state legislation which authorizes fees do so by amendments to general state business laws or to the State Radiation Control Act. The suggested Radiation User Fee Act has been drafted as a new act.

The act authorizes the establishment of a schedule of fees. The basis of the schedule is to obtain sufficient funds to reimburse the state for partial cost of registration, licensing, inspection and environmental surveillance of registered and licensed users. The act provides that the fee charged does not exceed the estimated costs of the radiation protection services. An exemption for state agencies is authorized and authority is established for exempting other persons from fee requirements.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. /Short Title./ This act may be cited as the /State/
2 Radiation User Fee Act.

1 Section 2. /Definitions./ As used in this act:

2 (a) Byproduct material means any radioactive material (except
3 special nuclear material) yielded in or made radioactive by exposure
4 to the radiation incident to the process of producing or utilizing
5 special nuclear material.

6 (b) Ionizing radiation means gamma rays and X-rays; alpha and
7 beta particles, high-speed electrons, neutrons, protons, and other
8 nuclear particles; but not sound or radio waves, or visible,
9 infrared, or ultraviolet light.

10 (c) License -- General and Specific

11 (1) General license means a license issued to a person
12 effective pursuant to regulations promulgated by the /agencies or
13 cite appropriate agency/¹ under the /State Radiation Control Act/²
14 without the filing of an application to transfer, acquire, own,
15 possess or use quantities of, or devices or equipment utilizing by-

¹
The phrase "agencies or cite appropriate agency" appears in brackets throughout this act. The term is generally intended to include the Department of Health, the Department of Labor or any state agency having statutory authority for control of radiation hazards.

Cite state act giving the affected agencies of the state the authority to promulgate rules and regulations for the registration of radiation machines and issuance of licenses for radioactive material.

16 product, source, special nuclear materials, or other radioactive
17 material occurring naturally or produced artificially.

18 (2) Specific license means a license, issued to a person
19 after application, to use, manufacture, produce, transfer, receive,
20 acquire, own, or possess quantities of, or devices or equipment
21 utilizing byproduct, source, special nuclear materials, or other
22 radioactive material occurring naturally or produced artificially.

23 (d) Person means any individual, corporation, partnership,
24 firm, association, trust, estate, public or private institution,
25 group, agency, political subdivision of this state, any other state
26 or political subdivision or agency thereof, and any legal successor,
27 representative, agent, or agency of the foregoing, other than the
28 United States Nuclear Regulatory Commission, or any successor thereto,
29 and other than federal government agencies licensed by the United
30 States Nuclear Regulatory Commission, or any successor thereto.

31 (e) Radioactive material means any material (solid, liquid or
32 gas) which emits radiation spontaneously.

33 (f) Source materials means (1) uranium, thorium, or any other
34 material which the Governor declares by order to be source material
35 after the United States Nuclear Regulatory Commission, or any
36 successor thereto, has determined the material to be such; or (2)
37 ores containing one or more of the foregoing materials, in such
38 concentration as the Governor declares by order to be source material
39 after the United States Nuclear Regulatory Commission, or any
40 successor thereto, has determined the material in such concentration

41 to be source material.

42 (g) Special nuclear material means (1) plutonium, uranium 233,
43 uranium enriched in the isotope 233 or in the isotope 235, and any
44 other material which the Governor declares by order to be special
45 nuclear material after the United States Nuclear Regulatory Commission,
46 or any successor thereto, has determined the material to be such, but
47 does not include source material; or (2) any material artificially
48 enriched by any of the foregoing, but does not include source material.

49 (h) Registration means registration with the agencies or cite
50 appropriate agency in accordance with regulations adopted pursuant to
51 the State Radiation Control Act.

52 (i) Radiation machine means any device capable of producing
53 radiation except those which produce radiation only from radioactive
54 materials.

55 (j) Additional definitions may be included.

1 Section 3. Radiation User Fees.

2 (a) The agencies or cite appropriate agency shall prescribe
3 and collect such fee, charge or price as may be established by rule
4 or regulation from any person for radiation protection services
5 provided by the agencies or cite appropriate agency under the State
6 Radiation Control Act.

7 (b) Radiation protection services for which fees, charges or
8 prices may be established include (1) registration of radiation
9 machines, (2) issuance of specific licenses by the agencies or cite
10 appropriate agency for radioactive materials, (3) inspections of

11 registrants or licensees as authorized by the State Radiation
12 Control Act and (4) environmental surveillance activities conducted
13 by the agencies or cite appropriate agency to assess the radio-
14 logical impact upon the environment of activities conducted by specific
15 licensees of the agencies or cite appropriate agency.

16 (c) The agencies or cite appropriate agency in determining
17 rates of such charges shall, as an objective, obtain sufficient funds
18 therefrom to reimburse the state for partial costs of the
19 radiation protection services specified in paragraph (b) of this
20 section. The charges shall be related, in part, to the
21 actual costs incurred in administering the radiation protection
22 services specified in paragraph (b) of this section. In so doing,
23 the agencies or cite appropriate agency shall take into account
24 any special arrangements between the state and a registrant or
25 licensee, or another state, or a federal agency whereby the cost of
26 the service is otherwise recovered.

1 Section 4. Exemptions

2 (a) Fees for registration of radiation machines and for specific
3 licenses for radioactive material shall not be required for:

4 (1) an agency of the state or any political subdivision
5 thereof, or

6 (2) any person who the agencies or cite appropriate
7 agency by rule or regulation determines are exempt
8 as authorized by law and such exemption is in the
9 public interest.

10 (b) Any person may file application for exemption under this
11 paragraph for activities including, but not limited to, the use of
12 registered or licensed sources of radiation for educational or non-
13 commercial public displays or scientific collections.

1 Section 6. [Enforcement.]

2 In any case where the [agencies or cite appropriate agency] finds
3 a registrant or licensee has failed to pay the applicable fee, the
4 [agencies or cite appropriate agency] may suspend or revoke the
5 license or may issue such order as is determined to be appropriate
6 or necessary to carry out the provisions of this Act and the [State
7 Radiation Control Act].

1 Section 7. [Severability.] [Insert severability clause.]

1 Section 8. [Repeal.] [Insert repealer clause.]

1 Section 9. [Effective Date.] [Insert effective date.]

This act is based upon several state statutes, H.R. 13156 (94th Congress, 2nd Session) a bill to amend the Atomic Energy Act of 1954, and the suggested State Radiation Control Act as set out in the Suggested State Legislation - Program for 1961.