



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

August 6, 1997

Dana K. Mount, P.E., Director
Division of Environmental Engineering
Environmental Health Section
North Dakota Department of Health
1200 Missouri Avenue
P.O. Box 5520
Bismarck, North Dakota 58506-5520

Dear Mr. Mount:

The comments below reflect our review of proposed revisions to North Dakota (ND) regulations dated May 15, 1997, that were received electronically by the Office of State Programs on May 15, 1997, and by hard copy on May 28, 1997. Our comments follow the order of regulations shown in the summary chart provided.

1. Preparation, transfer for commercial distribution, and use of byproduct material for medical use, ND Chapters 01, 03, and 07. The proposed regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Parts 30, 32, and 35. As a result of our review, we have no comment.
2. Frequency of medical examinations for use of respiratory protection equipment, ND Chapter 04.1. The proposed regulations were reviewed by comparison to the equivalent regulations in 10 CFR Part 20. As a result of our review, we have no comment.
3. Low-Level waste shipment manifest information and reporting, ND Chapters 01 and 04.1 (Appendix G). The proposed regulations were reviewed by comparison to the equivalent regulations in 10 CFR Parts 20 and 61. As a result of our review, we have one comment, as enclosed, that needs to be addressed.
4. Performance requirements for radiography equipment, ND Chapter 05 (subsection 33-10-05.4.1). The proposed regulations were reviewed by comparison to the equivalent regulations in 10 CFR Part 34. As a result of our review, we have no comment.
5. Radiation protection requirements: amended definitions and criteria, ND Chapters 04.1 and 10. The proposed regulations were reviewed by comparison to the equivalent regulations in 10 CFR Parts 19 and 20. As a result of our review, we have no comment.
6. Clarification of decommissioning funding requirements, ND Chapter 03. The proposed regulations were reviewed by comparison to the equivalent regulations in 10 CFR Parts 30, 40 and 70. As a result of our review, we have no comment.

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7. 10 CFR Part 71: Compatibility with the International Atomic Energy Agency, ND Chapters 01 and 13 (changes throughout chapter). The proposed regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Part 71. As a result of our review, we have one comment, as enclosed, that needs to be addressed.
8. Medical administration of radiation and radioactive materials, ND Chapters 01, 04.1, and 07. The proposed regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Parts 20 and 35. As a result of our review, we have no comment.
9. Termination or transfer of licensed activities: record keeping requirements, ND Chapter 03. The proposed regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Parts 20, 30, 40, 61 and 70. As a result of our review, we have no comment.
10. Resolution of dual regulation of airborne effluents of radioactive materials; Clean Air Act, ND Chapter 04.1. The proposed regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Part 20. As a result of our review, we have no comment.
11. Corrections to Part 20: Standards for Protection Against Radiation, ND Chapters 03, 04.1, 07 and 10. The proposed regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Part 20. As a result of our review, we have no comment.
12. Criteria for the release of individuals administered radioactive material, ND Chapters 04.1 and 07. The proposed regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Parts 20 and 35. As a result of our review, we have no comment.
13. Recognition of Agreement State Licenses in areas under exclusive Federal jurisdiction within an Agreement State, ND Chapter 03. The proposed regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Part 150. As a result of our review, we have no comment.
14. Radiological criteria for license termination, ND Chapters 01, 03, 04.1 (subsection 33-10-04.1-18). The proposed regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Parts 20, 30, 40, and 70 as the regulations appeared in the final rule published in the Federal Register on July 21, 1997. Please note that the final rule differs from the version that you had received previously. As a result of our review, we have one comment, as enclosed, that needs to be addressed.

Please note that we are providing comments only on issues that appear to conflict with Divisions 1 or 2 compatibility requirements. Also, please be aware that under our current procedure, a finding that a regulation meets the compatibility requirements may only be

made based on a review of the final text of the regulation. However, we have determined that if the proposed regulations we reviewed incorporate the comments provided and were adopted without other significant change, they would be compatible.

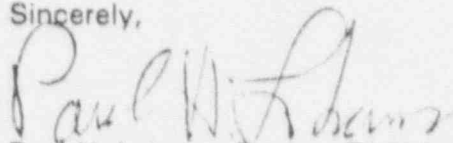
Under the compatibility categories for the new adequacy and compatibility policy statement and implementing procedures recently approved by the Commission, two of the provisions identified in the enclosed comments are designated Compatibility Category B. Under the new procedures approved by the Commission, an Agreement State should adopt essentially identical requirements because the provisions have direct transboundary implications. The rule sections identified in the comment concerning the decommissioning rule are designated Compatibility Category C. Under the new procedures, a Category C compatibility designation means that an Agreement State should adopt the essential objectives of these requirements.

In addition, in your cover letter, you wanted us to address 10 CFR 71.18 and 71.20 and the corresponding Sections 11 and 12 in ND Chapter 33-10-13. We shall discuss this in a separate letter.

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 our All Agreement States Letter SP-96-027, "Request to Highlight Changes to Agreement State Regulations Submitted to NRC for Compatibility Review" (March 1, 1996), please highlight the final changes and send one copy in a computer readable format, if possible.

If you have any questions regarding these comments, the compatibility criteria, or the NRC regulations used in the review, please contact me or Dr. Stephen N. Salomon of my staff at (301) 415-2368, or INTERNET: SNS@NRC.GOV.

Sincerely,



Paul H. Lohaus, Deputy Director
Office of State Programs

Enclosure:
As stated

made based on a review of the final text of the regulation. However, we have determined that if the proposed regulations we reviewed incorporate the comments provided and were adopted without other significant change, they would be compatible.

Under the compatibility categories for the new adequacy and compatibility policy statement and implementing procedures recently approved by the Commission, two of the provisions identified in the enclosed comments are Designated Compatibility Category B. Under the new procedures approved by the Commission, an Agreement State should adopt essentially identical requirements because the provisions have direct transboundary implications. The rule sections identified in the comment concerning the decommissioning rule are designated Compatibility Category C. Under the new procedures, a Category C compatibility designation means that an Agreement State should adopt the essential objectives of these requirements.

In addition, in your cover letter, you wanted us to address 10 CFR 71.18 and 71.20 and the corresponding Sections 11 and 12 in ND Chapter 33-10-13. We shall discuss this in a separate letter.

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 our All Agreement States Letter SP-96-027, "Request to Highlight Changes to Agreement State Regulations Submitted to NRC for Compatibility Review" (March 1, 1996), please highlight the final changes and send one copy in a computer readable format, if possible.

If you have any questions regarding these comments, the compatibility criteria, or the NRC regulations used in the review, please contact me or Dr. Stephen N. Salomon of my staff at (301) 415-2368, or INTERNET: SNS@NRC.GOV.

Sincerely, Original Signed By:
PAUL H. LOHAUS

Paul H. Lohaus, Deputy Director
Office of State Programs

Enclosure:
As stated

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**COMMENTS ON DRAFT NORTH DAKOTA REGULATIONS
AGAINST COMPATIBILITY DIVISIONS 1 AND 2 (NEW CATEGORIES)**

<u>Div.</u>	<u>State Regulation</u>	<u>NRC Regulation</u>	<u>Subject and Comments</u>
1 (B)* 04.1-14	20.2006 (excluding Appendix F)		Transfer for Disposal and Manifests Paragraph E was omitted from Appendix G. See 60 FR 25983 for the missing paragraph. Unless the missing paragraph is adopted, the regulation would not meet the compatibility criterion.
1 (B)* 13-02	71.4		Definition of low specific activity-I (LSA-I) The average specific activity should not exceed one millionth of the A ₂ per gram, not "one hundred thousandths" as stated. Unless the fraction is corrected, the regulations would not meet the compatibility criterion.
2 (C)* 04.1-18	See Table 1		Decommissioning Rule The final published NRC Decommissioning rule contains differences from the version North Dakota used to develop its rule. The differences concern new or revised requirements that should be addressed to assure compatibility. The provisions of the rule which were added or revised in the final rule are tabulated below to facilitate North Dakota's review of the final published rule. A copy of the final rule, with the revisions highlighted, is attached. The <u>Federal Register</u> Notice published July 21, 1997, 62 FR 39058, contains the final rule and all corresponding supplementary information.

Table 1. Changes to NRC's Final Decommissioning Rule

NRC Section	Addition or Revision	B.7 Division Compatibility	Compatibility Category
20.1403	20.1403(d)(2) was added	2	C
20.1404	20.1404(a)(1) was changed 20.1404(a)(4) was added 20.1404(b) was added	2	C
20.1405	20.1405(a)(2) was added	2	C

*Denotes rule's designation under the new Compatibility Policy.

Attachment:
As stated

PART 20 - STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

AUTHORITY: Secs. 53, 63, 75, 81, 103, 104, 161, 182, 186, 68 stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (2 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

2. In § 20.1003, the definition of Background radiation is revised and new definitions Critical Group, Decommission, Distinguishable from

background, and Residual radioactivity are added in alphabetical order to read as follows:

§ 20.1003 Definitions.

* * * * *

Background radiation means radiation from cosmic sources; naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from source, byproduct, or special nuclear materials regulated by the Commission.

* * * * *

Critical Group means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

* * * * *

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits--

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

* * * * *

Distinguishable from background means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

* * * * *

Residual radioactivity means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

* * * * *

3. In § 20.1009, paragraph (b) is revised to read as follows:

§ 20.1009 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 20.1003, 20.1101, 20.1202, 20.1203, 20.1204, 20.1206, 20.1208, 20.1301, 20.1302, 20.1403, 20.1404, 20.1406, 20.1501, 20.1601, 20.1703, 20.1901, 20.1902, 20.1904, 20.1905, 20.1906, 20.2002, 20.2004, 20.2006, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2205, 20.2206, 20.2301, and Appendices F and G to 10 CFR Part 20.

* * * * *

4. A new Subpart E entitled "Radiological Criteria for License Termination," is added to 10 CFR Part 20 to read as follows:

Subpart E--Radiological Criteria
for License Termination

Sec.

- 20.1401 General provisions and scope.
- 20.1402 Radiological criteria for unrestricted use.
- 20.1403 Criteria for license termination under restricted conditions.
- 20.1404 Alternate criteria for license termination.
- 20.1405 Public notification and public participation.
- 20.1406 Minimization of contamination.

§ 20.1401 General provisions and scope.

(a) The criteria in this subpart apply to the decommissioning of facilities licensed under Parts 30, 40, 50, 60, 61, 70, and 72 of this chapter, as well as other facilities subject to the Commission's jurisdiction under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended. For high-level and low-level waste disposal facilities (10 CFR Parts 60 and 61), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities. The criteria do not apply to uranium and thorium recovery facilities already subject to Appendix A to 10 CFR Part 40 or to uranium solution extraction facilities.

(b) The criteria in this subpart do not apply to sites which:

(1) have been decommissioned prior to the effective date of the rule in accordance with criteria identified in the Site Decommissioning Management Plan (SDMP) Action Plan of April 16, 1992 (57 FR 13389);

(2) have previously submitted and received Commission approval on a license termination plan (LTP) or decommissioning plan that is compatible with the SDMP Action Plan criteria; or

(3) submit a sufficient LTP or decommissioning plan before [insert a date 12 months after effective date of the rule] and such LTP or decommissioning plan is approved by the Commission before [insert date 24 months after effective date of the rule] and in accordance with the criteria identified in the SDMP Action Plan, except that if an EIS is required in the submittal, there will be a provision for day-for-day extension.

(c) After a site has been decommissioned and the license terminated in accordance with the criteria in this subpart, the Commission will require additional cleanup only if, based on new information, it determines that the criteria of this subpart were not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(d) When calculating TEDE to the average member of the critical group the licensee shall determine the peak annual TEDE dose expected within the first 1000 years after decommissioning. ~~Estimates must be substantiated using actual measurements to the maximum extent practical.~~ - [Note this line deleted from rule text based on staff recommendation that this phrase be moved to guidance where it would be more appropriate]

§ 20.1402 Radiological criteria for unrestricted use.

A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels which are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

§ 20.1403 Criteria for license termination under restricted conditions.

A site will be considered acceptable for license termination under restricted conditions if:

(a) The licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of § 20.1402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal;

(b) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) per year;

(c) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to

assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are:

(1) Funds placed into an account segregated from the licensee's assets and outside the licensee's administrative control as described in

§ 30.35(f)(1) of this chapter;

(2) Surety method, insurance, or other guarantee method as described in § 30.35(f)(2) of this chapter;

(3) A statement of intent in the case of Federal, State, or local Government licensees, as described in § 30.35(f)(4) of this chapter; or

(4) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(d) The licensee has submitted a decommissioning plan or License Termination Plan (LTP) to the Commission indicating the licensee's intent to decommission in accordance with §§ 30.36(d), 40.42(d), 50.82(a) and (b), 70.38(d), or 72.54 of this chapter, and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the LTP or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice.

(1) Licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning--

(i) Whether provisions for institutional controls proposed by the licensee;

(A) Will provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) TEDE per year;

(B) Will be enforceable; and

(C) Will not impose undue burdens on the local community or other affected parties.

(ii) Whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site;

(2) In seeking advice on the issues identified in § 20.1403(d)(1), the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

— (e) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is as low as reasonably achievable and would not exceed either--

(1) 100 mrem (1 mSv) per year; or

(2) 500 mrem (5 mSv) per year provided the licensee--

(i) Demonstrates that further reductions in residual radioactivity necessary to comply with the 100 mrem/y (1 mSv/y) value of paragraph (e)(1) of this section are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) Makes provisions for durable institutional controls;

(iii) Provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every 5 years to assure that the institutional controls remain in place as necessary to meet the criteria of § 20.1403(b) and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in paragraph (c) of this section.

§ 20.1404 Alternate criteria for license termination.

(a) The Commission may terminate a license using alternate criteria greater than the dose criterion of §§ 20.1402, 20.1403(b), and 20.1403(d)(1)(i)(A), if the licensee--

(1) Provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the 1 mSv/y (100 mrem/y) limit of Subpart D, by submitting an analysis of possible sources of exposure:
- [Note: this paragraph has been modified to be more clearly consistent with the text in Sections A.2.3.4 and C.1.3 of the preamble]

(2) Has employed to the extent practical restrictions on site use according to the provisions of § 20.1403 in minimizing exposures at the site; and

(3) Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal.

(4) Has submitted a decommissioning plan or License Termination Plan (LTP) to the Commission indicating the licensee's intent to decommission in accordance with §§ 30.36(d), 40.42(d), 50.82(a) and (b), 70.38(d), or 72.54 of this chapter, and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or LTP how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(b) The use of alternate criteria to terminate a license requires the approval of the Commission after consideration of the NRC staff's

recommendations that will address any comments provided by the Environmental Protection Agency and any public comments submitted pursuant to § 20.1405.

§ 20.1405 Public notification and public participation.

Upon the receipt of an LTP or decommissioning plan from the licensee, or a proposal by the licensee for release of a site pursuant to §§ 20.1403 or 20.1404, or whenever the Commission deems such notice to be in the public interest, the Commission shall:

(a) Notify and solicit comments from:

(1) local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(2) the Environmental Protection Agency for cases where the licensee proposes to release a site pursuant to § 20.1404.

(b) Publish a notice in the Federal Register and in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

§ 20.1406 Minimization of contamination.

Applicants for licenses, other than renewals, after [insert effective date of rule], shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste.

5. In §20.2402, paragraph (b) is revised to read as follows:

§ 20.2402 Criminal Penalties.

* * * * *

(b) The regulations in §§20.1001 through 20.2402 that are not issued under Sections 161b, 161i, or 161o for the purposes of Section 223 are as follows: §§20.1001, 20.1002, 20.1003, 20.1004, 20.1005, 20.1006, 20.1007, 20.1008, 20.1009, 20.1405, 20.1704, 20.1903, 20.1905, 20.2002, 20.2007, 20.2301, 20.2302, 20.2401, and 20.2402.

PART 30--RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF
BYPRODUCT MATERIAL

6. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 2902, 106 Stat 3123, (2 U.S.C. 5851). Section 30.71(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

7. In § 30.4, the definition of Decommission is revised to read as follows:

§ 30.4 Definitions.

* * * * *

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits--

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

* * * * *

8. In § 30.35, paragraph (f)(5) is added and paragraph (g)(3)(iv) is revised to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(5) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(g) * * *

(3) * * *

(iv) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in

10 CFR Part 20, subpart E, or apply for approval for disposal under 10 CFR 20.2002.

* * * * *

9. In § 30.36, the introductory text of paragraph (j)(2) and paragraph (k)(3) are revised to read as follows:

§ 30.35 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(j) * * *

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E. The licensee shall, as appropriate--

* * * * *

(k) * * *

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance

with the criteria for decommissioning in 10 CFR Part 20, subpart E.

* * * * *

PART 40--DOMESTIC LICENSING OF SOURCE MATERIAL

10. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851).

Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

11. In § 40.4, the definition of Decommission is revised to read as follows:

§ 40.4 Definitions.

* * * * *

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits--

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

* * * * *

12. In § 40.36, paragraph (e)(5) is added and paragraph (f)(3)(iv) is revised to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(e) * * *

.(5) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(f) * * *

(3) * * *

(iv) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in 10 CFR Part 20, subpart E, or apply for approval for disposal under 10 CFR 20.2002.

* * * * *

13. In § 40.42, the introductory text of paragraph (j)(2) and paragraph (k)(3) are revised to read as follows:

§ 40.42 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(j) * * *

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E. The licensee shall, as appropriate--

* * * * *

(k) * * *

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E.

* * * * *

PART 50--DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

14. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 is also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 82 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

15. In § 50.2, the definition of Decommission is revised to read as follows:

§ 50.2 Definitions.

* * * * *

Decommission means to remove a facility or site safely from service ,
and reduce residual radioactivity to a level that permits--

(1) Release of the property for unrestricted use and termination of the
license; or

(2) release of the property under restricted conditions and
termination of the license.

* * * * *

16. In § 50.82, paragraphs (a)(11)(ii) and (b)(6)(ii) are revised to
read as follows:

§ 50.82 Termination of license.

* * * * *

(a) * * *

(11) * * *

(ii) The terminal radiation survey and associated documentation
demonstrates that the facility and site are suitable for release in
accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E.

(b) * * *

(6) * * *

(ii) The terminal radiation survey and associated documentation demonstrate that the facility and site are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E

* * * * *

PART 51--ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING
AND RELATED REGULATORY FUNCTIONS

17. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853-854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95-604, Title II, 92 Stat. 3033-3041; and sec. 193, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241, and sec 148, Pub. L. 100-203, 101 Stat. 1330-223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036-3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

18. In § 51.22, paragraph (c)(20) is added to read as follows:

§ 51.22 Criterion for categorical exclusion: identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(c) * * *

(20) Decommissioning of sites where licensed operations have been limited to the use of--

- (i) Small quantities of short-lived radioactive materials; or
- (ii) Radioactive materials in sealed sources, provided there is no evidence of leakage of radioactive material from these sealed sources.

* * * * *

PART 70--DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

19. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486 sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234).

Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

20. In § 70.4, the definition of Decommission is revised to read as follows:

§ 70.4 Definitions.

* * * * *

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits--

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

* * * * *

21. In § 70.25, paragraph (f)(5) is added and paragraph (g)(3)(iv) is revised to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(5) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(g) * * *

(3) * * * - - -

(iv) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in 10 CFR Part 20, subpart E, or apply for approval for disposal under 10 CFR 20.2002.

* * * * *

22. In § 70.38, the introductory text of paragraph (j)(2) and paragraph (k)(3) are revised to read as follows:

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(j) * * *

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E. The licensee shall, as appropriate--

* * * *

(k) * * *

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E.

* * * *

PART 72--LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

23. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 48, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and Sec. 218(a) 96 Stat. 2252 (42 U.S.C. 10198).

24. In § 72.3, the definition of Decommission is revised to read as follows:

§ 72.3 Definitions.

* * * * *

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits--

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

* * * * *

25. In § 72.30, paragraph (c)(6) is added to read as follows:

§ 72.30 Financial assurance and recordkeeping for decommissioning.

* * * *

(c) * * *

(6) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity; and

* * * *

26. In § 72.54, the introductory text of paragraph (1)(2) and paragraph (m)(2) are revised to read as follows:

§ 72.54 Application for termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * *

(1) * * *

(2) Conduct a radiation survey of the premises where the licensed activities were conducted and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E. The licensee shall, as appropriate--

(m) * * *

(2)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E.

* * * * *

Dana K. Mount

- 4 -

regulation (60 FR 50248), not 150 from the proposed regulation (53 FR 21550). The Statement of Consideration for the Final Rule explains the difference as an error based on an atomic ratio instead of a mass ratio. Unless this correction is made, ND's regulation would not meet the compatibility criterion.

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 our All Agreement States Letter SP-96-027, "Request to Highlight Changes to Agreement State Regulations Submitted to NRC for Compatibility Review" (March 1, 1996), please highlight the final changes and send one copy in a computer readable format, if possible.

If you have any questions regarding these comments, the compatibility criteria, or the NRC regulations used in the review, please contact me or Dr. Stephen N. Salomon of my staff at (301) 415-2368, or INTERNET: SNS@NRC.GOV.

Sincerely,

Paul H. Lohaus, Deputy Director
Office of State Programs

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As stated

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*HHW - New w/understand
That 371.18 and 71.20 issue
will not be addressed in this
letter but will be dealt w/ later.*

**COMMENTS ON DRAFT NORTH DAKOTA REGULATIONS
AGAINST COMPATIBILITY DIVISIONS 1 AND 2 (NEW CATEGORIES)**

<u>Div.</u>	<u>State Regulation</u>	<u>NRC Regulation</u>	<u>Subject and Comments</u>
1 (B)*	04.1-14	20.2006 (excluding Appendix F)	<p>Transfer for Disposal and Manifests</p> <p>Paragraph E was omitted from Appendix G. See 60 FR 25983 for the missing paragraph. Unless the missing paragraph is adopted, the regulation would not meet the compatibility criterion.</p>
1 (B)*	13-02	71.4	<p>Definition of low specific activity-I (LSA-I)</p> <p>The average specific activity should not exceed one millionth of the A₂ per gram, not "one hundred thousandths" as stated. Unless the fraction is corrected, the regulations would not meet the compatibility criterion.</p>

** Denotes rule's designation under the new compatibility policy*

Dana K. Mount

- 4 -

regulation (60 FR 50248), not 150 from the proposed regulation (53 FR 21550). The Statement of Consideration for the Final Rule explains the difference as an error based on an atomic ratio instead of a mass ratio. Unless this correction is made, ND's regulation would not meet the compatibility criterion.

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 our All Agreement States Letter SP-96-027, "Request to Highlight Changes to Agreement State Regulations Submitted to NRC for Compatibility Review" (March 1, 1996), please highlight the final changes and send one copy in a computer readable format, if possible.

If you have any questions regarding these comments, the compatibility criteria, or the NRC regulations used in the review, please contact me or Dr. Stephen N. Salomon of my staff at (301) 415-2368, or INTERNET: SNS@NRC.GOV.

Sincerely,

Paul H. Lohaus, Deputy Director
Office of State Programs

Enclosure:
As stated

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LETTER TO:

Dana K. Mount, Director
Division of Environmental Engineering
North Dakota Department of Health

FROM:

Paul H. Lohaus, Deputy Director
Office of State Programs

SUBJECT:

NORTH DAKOTA RADIOLOGICAL HEALTH RULES WITH PROPOSED
REVISIONS FOR REVIEW

NOTE: PLEASE RETURN ALL INCOMING DOCUMENTS TO OSP

YOUR COMMENTS/CONCURRENCE ARE REQUESTED BY C.O.B. AUGUST 5, 1997.

OSP CONTACT: STEVE SALOMON (415- 2368)

PLEASE CALL KATHALEEN KERR (415-3340) FOR PICK UP.