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State of New Jersey

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Department of Environmental Protection '99 09-15 P1 41 Robert C. Shinn, Jr.
Commissioner

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PROPOSED RULE **PR 30, 31, 32 170+171**
(64FR40295)

September 10, 1999

U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff

Dear Secretary:

Thank you for the opportunity to comment on your proposed rule. Enclosed is a summary of the State of New Jersey's comments for the U.S. Nuclear Regulatory Commission on the "Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material" (Federal Register Vol.64, No.142, Monday, July 26, 1999).

Should there be any questions regarding the enclosed comments, kindly contact me or John Feeny of my staff at (609)984-5555.

Sincerely,

Jill Lipoti, Ph.D., Assistant Director
Radiation Protection Programs

Enclosure

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STATE OF NEW JERSEY'S
COMMENTS FOR THE U.S. NUCLEAR REGULATORY
COMMISSION ON THE RULE FOR REQUIREMENTS FOR
CERTAIN GENERALLY LICENSED INDUSTRIAL DEVICES
CONTAINING BYPRODUCT MATERIAL

The comments listed below are submitted in response to Federal Register Vol. 64, No. 142, Monday, July 26, 1999 Proposed Rule Action.

The first five comments address the specific questions the NRC had requested comments from the public:

- 1.+2. General licensees should be required to register their general licensed devices within 30 days of taking possession of the device, regardless of whether or not the NRC requests this information through a mailing or questionnaire. This requirement should be clearly stated in the regulation along with information required for registration and the address where the registration information and fees are to be sent. This portion of the registration rule should be part of the information required to be provided by the distributor or licensee authorized to transfer the general licensed device to a general licensee. Since the registration mailings will probably not be sent out certified mail, there is no guarantee or way to prove that every general licensee received the registration questionnaire. This may be used as an excuse by some general licensees for not registering their general licensed devices. The registration questionnaire should be viewed as an additional service provided by the NRC and not required of the NRC. It is the general licensees responsibility to make sure their general licensed devices are registered, with or without the registration questionnaire and the regulations should clearly state that fact.

- 3. Before they are allowed to ship a general licensed device, distributors should be required to obtain from the recipient, a signed "Certification Statement", that they acknowledge the fact that they have received copies of the regulations and other pertinent information, and that they are aware of the rights and responsibilities of a general licensee. This "Certification Statement" should also be required for all transfers of general licensed devices (i.e., distributor to initial recipient, initial recipient to subsequent recipients, etc.). Without some kind of signed documents, how can anyone prove that they were or were not properly informed of their obligations as a general licensee. Ultimately, it boils down to what evidence would a court require to prove responsibility for an abandoned general licensed device and any damages resulting from that device.**
- 4. We agree with the NRC-Agreement State Working Group's recommendation 3.1 listed in NUREG-1551, regarding Increased Regulatory Oversight, that there should be a Responsible Individual (RI) and Back-up Responsible Individual (BRI) for each general license. Unlike a specific license, where there would be a Radiation Safety Officer and Authorized Users, there may be only one person who has a real understanding that the device is generally licensed and contains a radioactive source. When this RI leaves or is let go, the general licensed device may be the farthest thing from his mind. This has occurred on many occasions in New Jersey and ultimately led to abandonment of the devices which found their way into the public domain.**
- 5. A national database of general licensees and their devices would be extremely valuable to the NRC in helping to track who has what devices and where they are located. This database along with NRC's expanding Nuclear Materials Events Database can be extremely helpful to the NRC and the States in tracking responsible parties when abandoned general licensed devices are discovered.**

The additional comments should also be considered to enhance the general license program and ensure that all parties are made aware of their responsibilities:

- 6. The information provided to recipients of the general licensed devices should also include a Safety Analysis Summary (SAS) for each general licensed device transferred. The SAS should provide information that would be useful to regulating agencies and end users during normal use and accident conditions. The NRC recognizes the fact that general licensees have no radiation background. Therefore, the NRC should recognize the fact that the general licensee would not be able to answer any questions raised by their employees about the hazards associated with routine use of the general licensed device or working in the area of such a device. Additionally, the general licensee would not know how to deal with incidents involving their device. A well thought out SAS should provide this information and during an incident would provide general recommendations that should be taken to possibly reduce contamination and unnecessary radiation exposure. This information could be used by the general licensee in a manner similar to Material Safety Data Sheets which many industrial facilities use routinely.**
- 7. Does the NRC plan to reclassify any devices from their current status of specific license to general license? If so, which devices are they and how many devices will be reclassified to general license status?**
- 8. Does the NRC plan to reclassify any devices from their current status of general license to specific license? If so, which devices are they and how many devices will be reclassified to specific license status?**

Should there be any questions regarding the above comments, kindly contact Dr. Jill Lipoti, Assistant Division Director, N.J. Department of Environmental Protection, P.O. 415, Trenton, New Jersey 08625-0415; (609)984-5520.