

# OHIO DEPARTMENT OF HEALTH

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Bob Taft  
Governor

J. Nick Baird, M.D.  
Director of Health

November 23, 1999

Craig Jensen, CHP  
Radiation Safety Officer  
Battelle Memorial Institute  
505 King Avenue  
Columbus, Ohio 43201

Dear Mr. Jensen:

I am writing in regard to the licensure of radioactive materials that you possess and handle as a part of your operations at Battelle Memorial Institute. Given the pending meeting with US Nuclear Regulatory Commission (NRC) officials on December 9, 1999, I believe that it is important that the Bureau of Radiation Protection (Bureau) communicate our position regarding the licensure of radioactive materials possessed and handled by Battelle prior to that meeting.

I understand that you have an application pending with the Bureau for the use of naturally occurring and accelerator produced (NARM) radioactive materials. The application was submitted on February 11, 1999, substantially before Ohio became an agreement state on August 31, 1999. Although the technical review of the application has been completed for some time, the Bureau has been unable to approve that application because Battelle has not provided financial assurance as required by Chapter 3748 of the Revised Code and rule 3701-39-021 of the Ohio Administrative Code. On November 2, 1999, e-mails between staff of the Bureau and Battelle indicated that Battelle agreed to provide evidence of adequate financial assurance by November 30, 1999. If the information is not received by this date, then the Bureau will be required to initiate formal action notifying Battelle that they are in violation of RC 3748.06 for handling radioactive material without a license.

In addition to the application to use NARM radioactive material that is pending with the Bureau, Battelle also possesses other radioactive material that is now subject to regulation by the Ohio Department of Health. The responsibility for regulating this additional material was transferred to Ohio on August 31, 1999, as part of Ohio's agreement with the NRC. In early August, the Bureau sent a letter to all NRC licensees advising them that they could amend their Ohio radioactive material license to incorporate their previous NRC license. The Bureau did not receive a response to this letter. In May of this year NRC advised all NRC licensees that they were required to modify their existing financial assurance documents to make them payable to the State of Ohio. The Bureau has not received a response from Battelle regarding this letter.

The Bureau is aware that certain types of radioactive material that Battelle possesses is not subject to regulation by the Ohio Department of Health. The concern of the Bureau is the material that is currently subject to the regulation by the Ohio Department of Health. Of primary concern is the by-product material that you possess along with certain amounts of source material and

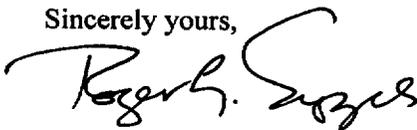
special nuclear material. It is the position of the Bureau that Battelle also has an application pending for the use of this material. The application was filed with the NRC in 1994; however, it is the position of the Bureau that this material is now subject to regulation by the Ohio Department of Health.

Recently, the Bureau received this application from NRC as part of the transfer of records of NRC licensees to Ohio. The Bureau has not completed the review of this application; however, the Bureau is aware that Battelle did not provide adequate financial assurance to NRC as required for possession and use of this material. Battelle must submit appropriate financial assurance associated with the use of this state regulated material before the Bureau can complete the review of the license application. Presently, the Bureau considers the application to be "timely filed".

Since there are two applications pending, Battelle needs to make some decisions regarding the final processing of the applications by the Bureau. Battelle may wish to consider using the provisions of OAC 3701-38-021(H). Since your previous NRC license was a broad scope license, the Bureau would consider an amendment to incorporate materials that were not by-product, source, or special nuclear material into that broad scope license, if the request is consistent with OAC 3701-39-021. If Battelle does not apply to incorporate the licenses, then the Bureau will manage the two applications separately, and require the issuance of two licenses. These two licenses will require the separate financial assurance documents.

As stipulated in previous correspondence, the Bureau expects to receive the financial assurance information for the NARM application by November 30, 1999, so that the NARM application can be finalized. The matter of the "timely filed" by-product application also needs to be resolved. The Bureau expects Battelle to provide financial assurance regarding the "timely filed" application by December 23, 1999. If Battelle provides the financial assurance document for their NARM application by November 30, 1999, then the Bureau will also be able to accept an amendment to incorporate the "timely filed" application into the NARM application resulting in a requirement for only one combined financial assurance instrument. If Battelle does not choose to combine their licenses, then separate financial assurance documents will be required.

Sincerely yours,



Roger L. Suppes, Chief  
Bureau of Radiation Protection

Cf: Marcia Howard, Nuclear Materials Safety  
Carol Ray, Office of Legal Services  
Jim Lynch, NRC, Region III  
Stephen Lewis, Office of the General Counsel, NRC ✓