



Pennsylvania Department of Environmental Protection

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March 16, 2007

**Bureau of Radiation Protection**

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Dr. Charles L. Miller  
Office of Federal and State Materials  
and Environmental Management Programs  
United States Nuclear Regulatory Commission  
Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852-2738

Dear Dr. Miller:

We completed our revisions to our formal Agreement State (AS) request based on your January 26, 2007, letter, Enclosure 1. Given the number of revisions made, we have included both one paper copy of the revised documents as well as two identical CD-ROMs containing each of the paper files electronically. I apologize for the delay in getting this information to you; however, as one would expect, procedure revisions take a fair amount of time. If we can do anything further to help you meet our AS status target date of October 1, 2007, please do not hesitate to contact me.

Per my January 18, 2007, letter to Mr. Scott W. Moore, Deputy Director, Division of Materials and State Agreements, given the revisions stated therein and appended, we consider this issue closed and we satisfy the legal binding requirements for compatibility and health and safety established in NRC's FSME Procedure SA-200.

After conducting a review of Enclosure 2 of your January 26 letter we have prepared this point-for-point response.

#### **Section 4.1 Legal Elements**

##### **4.1.2 Organization of the Proposed Program**

1. The Narrative (Enclosure 2) has been updated to clarify that Pennsylvania does not request authority for a sealed source and device evaluation program or a uranium recovery licensing program.
2. The Narrative (Enclosure 2) has been updated and Table 1 - "PA Complex Decommissioning Sites" now includes Westinghouse (Churchill Facility) and Curtiss-Wright Cheswick.



### **4.3 Licensing Program Elements**

#### **4.3.1 Procedures for the Technical Evaluation of Proposed Uses of Radioactive Material**

- a. In addition to selected portions of NUREG-1556 Volume 7 and 12, as licensing guidance we will be using the following documents in the evaluation of Part 40 Source Material Licenses (see Administrative Licensing Procedures, Enclosure 15):

NUREG-1520 - Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility;

NUREG-1757 - Consolidated NMSS Decommissioning Guidance;

NRC Regulatory Guide 3.67 - Standard Format and Content for Emergency Plans for Fuel Cycle and Materials Facilities; and

NRC Regulatory Guide 4.20 - Constraint on the Release of Airborne Radioactive Material to the Environment for Licensees Other Than Production Reactors.

- b. Our Manual 1246 has been updated to address the issue of license reviewer qualification. Please see Enclosure 6 through 14. Also please see our staff qualification matrices, Enclosure 5.
- c. Our Manual 1246 has been updated to address the issue of license reviewers for complex licensed activities. Please see Enclosure 6 through 14.

#### **4.3.5 Procedures for Assuring the Technical Quality of Licenses**

- a. The Administrative Licensing Procedures (Enclosure 15) have been updated to clarify the review and signature process. If the Radioactive Materials Licensing Chief is not available, the Radiation Control Chief will sign a completed license.

In addition, we have made changes to our staffing plan. Initially we had planned to use only Central Office staff to review licenses. However, based on our revised staff needs analysis we have decided to include select Regional Office staff in this process. Not only will this allow for additional FTEs for licensing activities (e.g., initial license review, second review, etc.), but it will help ensure consistent licensing actions across the state. It also bolsters our Department Continuity of Government plan. The Administrative Licensing Procedure (Enclosure 15) has been updated to allow for the use of Regional Office staff in the review of licenses.

- b. A summary of the revisions to the staff needs analysis follows (also see comment under Section 4.6.1). Your observation that we may have overestimated our staffing needs has merit. The staff needs analysis was revised in three ways. First the number and complexity of the decommissioning sites was re-evaluated and adjusted down. Second, the NRC was able to provide more up-to-date numbers of licensees. Finally, a formula used in the spreadsheet was revised to more accurately calculate our staff needs. These three adjustments resulted in a licensing staff need revision from 12.33 FTE to 6.33 FTE. Also the inspection staff need was reduced from 14.41 FTE to 7.24 FTE. See revised staff needs analysis, Enclosure 3.

A revised staffing plan, which is consistent with the staff needs analysis, is supplied as Enclosure 4. As noted above, the staffing plan now includes Regional Office staff involvement in license review. This involvement has been incorporated in our Administrative Licensing Procedures (Enclosure 15). Our current staffing plan allows for the Commonwealth to immediately assume all licensing, inspection, and decommissioning responsibilities without creating backlogs in any part of the Agreement State program. This does not assume the utilization of the one vacancy we currently have in our Radioactive Licensing Section, which will be filled shortly.

#### **4.3.6 Administrative Licensing Procedures**

- a. The License Termination Procedure (Enclosure 16) has been updated to include the additional provisions of NUREG-1757.
- b. The License Termination Procedure (Enclosure 16) has been updated to correct and clarify citations.
- c. The License Termination Procedure (Enclosure 16) has been updated to correct and clarify citations.
- d. The License Termination Procedure (Enclosure 16) has been updated to expand the description of the types of records.

#### **4.4 Inspection Program Elements**

##### **4.4.1 Procedures for Inspecting Facilities Where Radioactive Materials Are Stored or Used**

The changes to the Inspection Manual Chapters and Inspection Procedures outlined during the December 21, 2006 (note: not December 20th) conference call have been implemented. See Enclosures 22 through 44.

## **4.6 Technical Staffing and Training Program Elements**

### **4.6.1 Technical Staff Organization**

As we have noted in the Program Narrative, in addition to formal training, the staff presently employed in the program has decades of NARM licensing and inspection experience. This experience includes a range of activities, from simple gauges to complex broad scope, nuclear medicine and x-ray radiography operations. Thus, by virtue of their position and years of training and experience, I have granted certain managers and supervisors waivers as inspectors and license reviewers. Further, given the decade of experience involved with managing and oversight of complex decommissioning projects (e.g., Flannery Building radium-226 D&D project, Quehanna, Safety Light Corp., MolyCorp, et al.), by virtue of their position and years of experience, I have granted certain managers and supervisors waivers in the decommissioning area.

The NRC's January 26 letter requested a staffing plan broken out by each license category. As mentioned above, a staffing plan is supplied as Enclosure 4. Given the number and type of licenses we expect to receive from NRC as an Agreement State, I confirm that at this time, we have an adequate number of trained and qualified staff in place that will provide for quality licensing actions and inspections now and when the Agreement is signed. In summary, based on the enclosures with this letter, number and types of NRC licenses that will be transferred to the Commonwealth, we affirm the number of qualified program staff in our Central and Regional Offices are matched to the regulatory workload.

### **4.6.3 Qualifications of Current Technical Staff**

A staff qualification matrix is supplied as Enclosure 5. A summary of the revisions to Manual Chapter 1246, qualification and training follows.

Only minor changes to a majority of Inspection Manual Chapter 1246 and its appendices (Enclosures 6 - 14) were made, primarily to ensure consistency throughout the chapter. However, significant changes were made to appendix B - I and B - II. In the broadest sense these revisions, similar in both B - I and B - II, deal with qualifications for specific license categories. Our initial formal request lacked this specificity. We now believe we have a workable document for managing and capturing staff training and experience, including past and future on-the-job-training required for license reviewer and inspector qualification. I again confirm that at this time, we have an adequate number of trained and qualified staff in place that will provide for quality licensing actions and inspections now and when the Agreement is signed.

We base this on the fact that we have for decades licensed and inspected a range of NARM and decommissioning activities from simple nuclear gauges to complex NARM production accelerators. To further enhance our staff's skills in licensing, our

Radioactive Materials Licensing Chief has, and continues to, work directly with NRC Region I staff to review the PA byproduct, source and small quantity special nuclear material licenses. These licenses have been chosen for their range of complexity. This Licensing Chief is using the case studies to further enhance the experience of Central and Regional Office licensing staff through in-house training. Similarly, our trained and experienced Regional inspection staff are further enhancing their experience by accompanying NRC Region I staff on PA byproduct, source and small quantity special nuclear material license inspections. These case studies and inspections involve a range of complexity within the industrial, broad scope, medical and academic license groupings. Our Decommissioning Chief and program staff has for the past decade gained significant experience with some of the most complex sites in the country. The staff inspection and licensing experience is being further supplemented and extended by direct meetings, discussions, facility walk-downs with PA NRC licensees, equipment manufacturers, and, self-study, in-house and other formal training.

Related to the staff needs analysis, you will find enclosed our staffing plan and staff qualification matrix. As noted, we do calculate having adequately qualified full-time equivalent (FTE) staff at this time. In addition to the ongoing enhancement of staff experience, it should be noted that we are hosting two NRC training courses for inspection and licensing in mid-September 2007. This training may be a first for some staff, and a refresher for others. In addition to these two formal courses, program staff continue to attend NRC training in Maryland and Tennessee. Further, we have a plan in place and continue to work diligently toward qualifying any new staff through our established procedures. In addition to formal training noted above, we plan to follow a model that relies on practical on-the-job training with experienced license reviewers and inspectors. Any deviations in our training and qualification approach, from that of NRC, will not reduce the overall capacity of staff to independently perform the work of the Agreement and protect both public health and the environment. As noted in the Program Narrative, we have approval to hire additional staff upon signing of the Agreement. Our plan is to interview through the summer and hire just before and after we become an Agreement State. Lastly, we realize that on occasion we will need to reach-back to NRC and reach-out to other Agreement States on some licensing and inspection issues. It is our understanding that this is done often formally (e.g., through the Organization of Agreement States) and informally. We will not hesitate to do so ourselves should the need arise.

#### **4.7 Event and Allegation Response Program Elements**

##### **4.7.1 Procedures for Responding to Events and Allegations**

1. The reference to Appendix C in Manual Chapter 1301 has been deleted. See Enclosure 41.

2. In Manual Chapter 1303 references to the Office of State and Tribal Programs (STP) have been changed to the Office of Federal and State Materials and Environmental Management Programs (FSME). See Enclosure 43.
3. References to IITs and AITs have been removed from Inspection Procedure 87103. See Enclosure 25.
4. BRP-ALL-01, Complaint Processing Procedure, has been updated with references to additional guidance. See Enclosure 19.
5. BRP-ALL-01, Complaint Processing Procedure, has been updated with references to additional guidance. See Enclosure 19.
6. BRP-ALL-01, Complaint Processing Procedure, has been updated with references to additional guidance. See Enclosure 19.

#### **4.7.2 Procedures for Identifying Significant Events and Allegations, and for Entering Reports into the Nuclear Material Events Database (NMED)**

1. BRP-ER-6.10 and BRP-RM-03 have been revised and are enclosed as Enclosures 17 and 18.
2. BRP-ER-6.10 has been updated and is Enclosure 18.

I would also like to take this opportunity to provide additional clarification on a few issues as follows:

First, we affirm that our Agreement State request cannot and does not include any oversight authority of nuclear power plants. However, we look forward to the continued cooperation with NRC under established memoranda of understanding (MOU) and protocol agreements.

Second, I would like to provide our procedures for adjudication of licensing actions. This documentation, Commonwealth of PA Environmental Hearing Board (EHB) Practice and Procedure Manual and Commonwealth of PA EHB Regulations, is included here as Enclosure 20 and 21. Furthermore, I would like to provide the following summary.

Appeals of all BRP licensing actions may be taken to the EHB in accordance with the EHB statute and the procedures established by the EHB in its procedural rules. The EHB is an independent adjudicative agency that hears appeals from final actions of the PADEP. Issuance of a radioactive materials license, or denial of a license application,

are final actions by the Department which are subject to appeal to the EHB. EHB adjudications can be appealed to the Pennsylvania Commonwealth Court; rights of appeal from Commonwealth Court decisions to the Pennsylvania Supreme Court are governed by Pennsylvania's Appellate Court Rules. The statute providing for the EHB is at 35 P.S. §§ 7511-7516; the EHB's Rules of Practice and Procedure are at 25 Pa. Code Ch. 1021.

Pennsylvania law does not provide for an administrative licensing proceeding akin to that utilized by the NRC in which a party may petition to intervene in the licensing proceeding and request a hearing before the Atomic Safety and Licensing Board. Rather, under Pennsylvania law any person whose rights, obligations, or interests may be affected by a final action of the Department, (i.e., any person with judicial standing), has a statutory right to a *de novo* hearing before the EHB concerning the legality of the Department action being challenged. All aspects of the Department's decision making process for a license or permit application could be subject to *de novo* review by the EHB in an appeal of the licensing action. There is no licensing "proceeding" in which an interested person may intervene prior to the final Department decision; instead, an interested person may appeal the final decision and subject the entire decision making process to a *de novo* review by an independent adjudicative agency composed of five administrative law judges.

The Department's general practice is for the issuance of a license or permit to include a cover letter containing a standard appeal rights notice; denial of a license would use the same process. Upon receipt of the final action by the Department (i.e., the decision to issue or deny the license), the licensee or prospective licensee would have 30 days to appeal the decision as of right to the EHB. An interested third party may file an appeal with the EHB of a PADEP licensing or permitting decision within 30 days of receiving notice of issuance of the license or permit.

Thirdly, to support the regulated community in the transition from NRC to DEP regulation, we have planned four outreach meetings through the Commonwealth. At these meetings we will describe our department and program framework, statutes and regulations, procedures, contact information, and stress our intent to make the transition to Agreement State status as seamless as possible (i.e., use of NRC regulations, guidance, and inspection procedures).

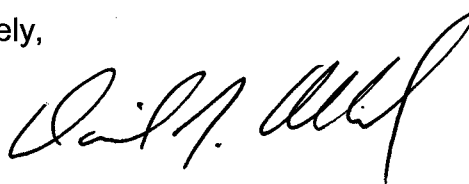
Other miscellaneous transition plans are being implemented as well. One of which is an evaluation of our records management system and update the retention schedules. This effort will enable us to maintain the active and historical records we receive as an Agreement State more efficiently. We also understand the NRC will maintain and hold the existing licensee decommissioning financial assurance instruments until the Commonwealth has their own executed per NUREG-1757.

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Finally, we realize the timeline of our application has slipped a few weeks, but it is our hope that we can meet the October 1, 2007, date for implementation of the Agreement. Given this is the beginning of the federal fiscal year and a point for NRC to invoice licensees, this effective date for the Agreement would be quite efficient for the NRC, licensees, and the Commonwealth.

If you have any questions about this letter or the enclosed revised documents, please contact me by e-mail at [djallard@state.pa.us](mailto:djallard@state.pa.us) or by telephone at (717) 787-2480. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Allard". The signature is fluid and cursive, with a large initial "D" and "A".

David J. Allard, CHP  
Director  
Bureau of Radiation Protection

cc: Cover Letter only  
Kathleen A. McGinty, Secretary, DEP  
Thomas K. Fidler, Deputy Secretary, WARM, DEP  
Arthur Stephens, Governor's Office  
Roy Kienitz, Governor's Office



Enclosure #	Enclosure Name
1	Dr. Charles L. Miller, January 26, 2007 letter w/ enclosures
2	Revised Narrative
3	Revised Staff Needs Analysis
4	Staffing Plan
5	Staff Qualification Matrices Revised DEP MC 1246 (Training and Qualification)
6	MC 1246 - Main
7	MC 1246 Appendix A
8	MC 1246 A - I
9	MC 1246 A - II
10	MC 1246 A - IX
11	MC 1246 Appendix B
12	MC 1246 B - I
13	MC 1246 B - II
14	MC 1246 B - IX
15	Revised Administrative Licensing Procedures
16	Revised License Termination Procedure
17	Revised BRP-RM-03 NMED Procedure
18	Revised BRP-ER-6.10 Radiological Incident Response
19	Revised BRP-ALL-01 Complaint Processing Procedure
20	Commonwealth of PA Environmental Hearing Board Practice and Procedure Manual
21	Commonwealth of PA Environmental Hearing Board Regulations, 25 PA Code 1021 Revised Inspection Procedures
22	IP 83822 Radiation Protection
23	IP 86740 Inspection of Transportation Activities
24	IP 87102 Maintaining Effluents ALARA
25	IP 87103 Insp of RAM Licensees in an Incident or Bankruptcy Filing
26	IP 87124 Gauge Programs
27	IP 87125 Materials Processor - Manufacturer Programs
28	IP 87126 Industrial - Academic - Research Programs
29	IP 87130 Nuclear Medicine Programs - Written Directive Not Required
30	IP 87131 Nuclear Medicine Programs - Written Directive Required
31	IP 87132 Brachytherapy Programs
32	IP 87133 Medical Gamma Stereotactic Radiosurgery and Teletherapy Programs
33	IP 87134 Medical Broad Scope Programs
34	IP 92701 Follow-up

Enclosure #	Enclosure Name
	Revised Inspection Manual Chapters
35	MC0300 Announced and Unannounced Inspections
36	MC0610 Nuclear Material Safety Inspection Reports
37	MC0620 Inspection Documents and Records
38	MC1120 Preliminary Notifications
39	MC1220 Processing of DEP Form 241 and Inspection of Reciprocity Licensees
40	MC1301 Response to Incidents
41	MC1302 Followup and Action Lvl's for Rad Exp Contam for Events Involving Pub
42	MC1303 Requesting DOE Acceptance
43	MC2602 Decom Insp Program for RAM
44	MC2800 Materials Inspection Program