

March 22, 2007

Thor Strong, Chief
Radiological Protection and Medical Waste Section
Michigan Department of Environmental Quality
P.O. Box 30241
Lansing, MI 48909-7741

Dear Mr. Strong:

We have reviewed Michigan's "Public Health Code - Radiation Control Act" contained in Michigan Statute Part 135 received by our office on February 14, 2007. The legislation was reviewed by comparison to the criteria in Section 4.1.1 of the Office of Federal and State Materials and Environmental Management Programs (FSME) SA-700 and Handbook "Processing an Agreement". We discussed our review of the legislation with you today.

We appreciate the opportunity to perform an early review of your legislation and offer the following comments:

1. Michigan statutes directly establish a radioactive materials program (Department) and an Advisory Radiation Advisory Committee (Committee), but do not define the structure of the Department. Please see SA-700 Handbook, Section 4.1.1.1, Information Needed, paragraph (a).
2. In regard to the Michigan rulemaking process, the Michigan statutes in Part 135 are very generic and do not provide any specific procedures, requirements, or provisions relating to public participation. Please see SA-700 Handbook, Section 4.1.1.1, paragraph (c)(1). If the Michigan rulemaking process is described in other sections of the Michigan statutes, please be sure to include a copy with your draft application.
3. Also in regard to the Michigan rulemaking process, if licensees are permitted to be on the Commission of Radiation Protection and participate in the rule or regulation formulation and promulgation, a "conflict of interest" program or policy must be in place. Please include any applicable documentation with your draft application.
4. The Michigan statutes should authorize the use of license conditions/orders to address matters unique to the licensee. Although the Michigan legislation does authorize the program to issue licenses, the Michigan legislation does not clearly authorize the program to:
 - impose additional license requirements;
 - recognize the licenses of other jurisdictions; or
 - recognize licenses transferred from NRC under the Agreement as State licenses, if necessary.

5. The Michigan statutes should permit exemptions from licensing requirements if the exemptions do not adversely affect public health and safety and should include exemption from requirements to obtain a license. Please see SA-700 Handbook, Section 4.1.1.1, paragraph (b)(2); and 4.1.1.2, Evaluation Criteria, paragraph (e). In addition, SA-700 Handbook Section 4.1.1.2(e)(i-iv) provides four specific exemptions that should be addressed by an Agreement State either by statute or regulation. If these four specific exemptions are addressed or will be addressed in Michigan regulations, it is not necessary to include them in the Michigan statutes.
6. The Michigan legislation does not expressly authorize the program to require compliance with regulatory requirements by both licensees and unlicensed individuals. Please see SA-700 Handbook, Section 4.1.1.1, paragraph (e).
7. Although the Michigan legislation does not apply to nuclear reactors, the Michigan legislation does not explicitly seek not to regulate all materials or activities reserved to the NRC under Section 274c of the Atomic Energy Act of 1954, as amended, or Title 10 of the Code of Federal Regulations Part 150. Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (b).
8. Although the Michigan legislation does provide for imposition of civil penalties, the Michigan legislation does not provide general authority to take prompt enforcement action and does not authorize a variety of legal sanctions, including suspension of licenses and impoundment of materials. In cases of imminent threat to public health and safety, the law should authorize immediate suspension without prior hearing. Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (h).
9. Although the Michigan legislation does provide for the imposition of civil penalties, the Michigan legislation does not:
 - authorize suspension or revocation of a license for repeated or continued noncompliance;
 - authorize the program to seek injunctive relief; or
 - authorize the program to refer licensees for criminal prosecution.Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (i).
10. If Michigan plans to request low-level radioactive waste authority, the Michigan statutes must authorize appropriate restrictions on land ownership and use of sites used for disposal of low-level radioactive waste for an indefinite period after closure of the site.
11. If Michigan plans to request regulation of byproduct material as defined in Section 11e.(2) of the Act, the State should submit the law that authorizes the regulation of uranium and thorium recovery facilities including disposal of mill tailings.

We recommend that you address the eleven comments above concerning the general authority provided to the Department. If this authority is provided through other statutes, please provide this information in your draft application. If you would like us to review this information prior to

submittal of your draft application, please let us know. In addition, Michigan may resolve these comments through interpretation of State law. NRC will accept interpretations provided by the State Attorney General, or other attorney designated as legal advisor to the radioactive materials program. To assist the State in responding to these comments, the 1983 Council of State Governments generic model of a Radiation Control Act in Suggested State Legislation, Volume 42, can be found at: <http://www.crcpd.org/PDF/RadControl.PDF>.

If you have any questions regarding the comments, please contact Kathleen Schneider, State Regulation Review Coordinator at 301-415-2320 (email: kxs@nrc.gov) or William Rautzen at 301-415-7206 (e-mail: wrr@nrc.gov).

Sincerely,

Scott W. Moore, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

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DCD (SP03)
James Lynch, RSAO
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