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State of Wisconsin
Department of Health and Family Services

October 3, 2001

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OSP

Mr. Frederick C. Combs
Deputy Director
Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Combs:

Enclosed is a copy of final revisions to Wisconsin Statutes, Subchapter III, Radiation Protection (ss. 254.31-.45, WI Stats.). The revisions respond to a March 29, 1999 letter from Paul Lohaus (see attached) requesting specific changes in our proposed agreement state enabling statutes (ss. 254.31-.45, WI Stats.) to meet NRC compatibility requirements, plus recommendations from our department legal counsel. Deleted language is indicated by ~~striketrough~~ and new language is indicated by underlining. We request NRC's written comments on the final statutory revisions by December 15, 2001.

The specific actions required in the 3/29/99 letter and the corresponding changes made in ss. 254.31-.45, WI Stats. are as follows:

- | | |
|-----------------------|--|
| NRC Comment 1: | Revise the definition of "source material" to incorporate the language as noted in 10 CR Part 40. |
| Response: | s. 254.31 (10) definition of "source material" revised to be compatible with 10 CFR 40. |
| NRC Comment 2: | Use the words "compatible with" in place of the words "no less stringent than." |
| Response: | s. 254.34 (1) (a) revised to use words "compatible with." |
| NRC Comment 3: | Use the words "non-federal agency NRC licensees" in place of the words "federal licenses" in the last sentence [of s. 254.36 (2)]. |
| Response: | Section 254.36 (2) and the words "federal licenses" do not exist in ss. 254.31-.45, WI Stats. No change made. |

The following additional changes were made to ss. 254.31-.45, WI Stats.:

1. Section 254.34 (2) (c) was created to provide clear authority to the department to establish training and other qualification requirements in rule.
2. Section 254.34 (2) (d) was created to provide clear authority to the department to recognize

certification of an individual done by another state or organization (ex: industrial radiographer certification).

We believe that the revision of ss. 254.31-.45, WI Stats. adequately responds to the attached March, 29, 1999 letter and provides specific statutory authority necessary for Wisconsin's agreement state program. If you have any questions, please feel free to contact me at (608) 267-4792 or schmips@dhfs.state.wi.us.

Sincerely,



Paul Schmidt, Chief
Radiation Protection Section

cc: Tom Sieger, BEH
Jim Lynch, NRC Region III

Attachments:

- Amendments to ss. 254.31-.45, WI Statutes, approved by Governor as part of WI SFY 02-03 biennial budget in August, 2001
- SFY 00-01 ss.254.31-.45 WI Statutes (final – reference only)
- Copy of NRC letter dated March 29, 1999

costs of administering the congenital disorder program under this section and shall credit these amounts to the appropriations under s. 20.435 (1) (jb) and (5) (ja).

SECTION 3143m. 254.11 (13) of the statutes is amended to read:

254.11 (13) "Third-party payer" means a disability insurance policy that is required to provide coverage for a blood lead test under s. 632.895 (10) (a); a health maintenance organization or preferred provider plan under ch. 609; a health care coverage plan offered by the state under s. 40.51 (6); a self-insured health plan offered by a city or village under s. 66.0137 (4), a political subdivision under s. 66.0137 (4m), a town under s. 60.23 (25), a county under s. 59.52 (11) (c), or a school district under s. 120.13 (2) (b); or a sickness care plan operated by a cooperative association under s. 185.981.

SECTION 3144. 254.31 (10) of the statutes is amended to read:

254.31 (10) "Source material" means ~~any material except special nuclear material, which contains by weight 0.05 per cent or more of uranium, thorium, or any combination thereof in any physical or chemical form, or ores that contain by weight 0.05% or more of uranium, thorium, or any combination thereof.~~ "Source material" does not include special nuclear material.

SECTION 3145. 254.34 (1) (a) of the statutes is amended to read:

254.34 (1) (a) Promulgate and enforce rules, including registration and licensing of sources of ionizing radiation, as may be necessary to prohibit and prevent unnecessary radiation exposure. The rules may incorporate by reference the recommended standards of nationally recognized bodies in the field of radiation protection and other fields of atomic energy, under the procedure established by s. 227.21 (2). The rules for by-product material, source material and special nuclear material ~~may be no less stringent than shall be in accordance with the requirements of 42 USC 2021 (c) and shall otherwise be compatible with the requirements under 42 USC 2011 to 2114 and regulations adopted under 42 USC 2011 to 2114.~~

SECTION 3146. 254.34 (2) (c) of the statutes is created to read:

254.34 (2) (c) Develop requirements for qualification, certification, training, and experience of an individual who does any of the following:

1. Operates radiation generating equipment.
2. Utilizes, stores, transfers, transports, or possesses radioactive materials.
3. Acts as a radiation safety consultant to any person who possesses a license or registration issued by the department under this subchapter.

SECTION 3147. 254.34 (2) (d) of the statutes is created to read:

254.34 (2) (d) Recognize certification by another state or by a nationally recognized certifying organiza-

tion of an individual to perform acts under par. (c) 1. to 3. if the standards for the other state's certification or the organization's certification are substantially equivalent to the standards of the department for certification of individuals under par. (c).

SECTION 3147w. 254.47 (1) of the statutes is amended to read:

254.47 (1) Except as provided in sub. (1g) and ss. 250.041 and 254.115, the department or a local health department granted agent status under s. 254.69 (2) shall issue permits to and regulate campgrounds and camping resorts, recreational and educational camps and public swimming pools. No person or state or local government who has not been issued a permit under this section may conduct, maintain, manage or operate a campground and camping resort, recreational camp and educational camp or public swimming pool, as defined by departmental rule.

SECTION 3147x. 254.47 (1g) of the statutes is created to read:

254.47 (1g) A campground permit is not required for camping at county or district fairs at which 4-H Club members exhibit, for the 4 days preceding the county or district fair, the duration of the county or district fair, and the 4 days following the county or district fair.

SECTION 3148. 254.47 (1m) of the statutes is created to read:

254.47 (1m) The department or a local health department granted agent status under s. 254.69 (2) may not, without a preinspection, grant a permit to a person intending to operate a new public swimming pool, campground, or recreational or educational camp or to a person intending to be the new operator of an existing public swimming pool, campground, or recreational or educational camp.

SECTION 3149. 254.47 (2) of the statutes is amended to read:

254.47 (2) A separate permit is required for each campground, camping resort, recreational and or educational camp and public swimming pool. No permit issued under this section is transferable from one premises to another or from one person, state or local government to another, except that the permit may be transferred from an individual to an immediate family member, as defined in s. 254.64 (4) (a), if the individual is transferring operation of the campground, camping resort, recreational and or educational camp or public swimming pool to the immediate family member.

SECTION 3150. 254.47 (4) of the statutes is amended to read:

254.47 (4) Permits issued under this section expire on June 30, except that permits initially issued during the period beginning on April 1 and ending on June 30 expire on June 30 of the following year. Except as provided in s. 254.69 (2) (d) and (e), the department shall promulgate rules that establish, for permits issued under this section,

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escrow until the owner of the dwelling or premises complies with the order.

(c) Sections 254.11 to 254.178 do not limit the ability of the department to require abatement of human health hazards involving lead under s. 254.59.

(2) **PENALTIES.** (a) *Civil penalty.* Any person who violates ss. 254.11 to 254.178 or rules promulgated, or orders issued, under those sections may be required to forfeit not less than \$100 nor more than \$1,000. Each day of continued violation constitutes a separate offense.

(b) *Criminal penalty.* Any person who knowingly violates any provision of ss. 254.11 to 254.178 or any rule promulgated, or order issued, under those sections shall be fined not less than \$100 nor more than \$5,000. The court may place the person on probation under s. 973.09 for a period not to exceed 2 years.

History: 1979 c. 221; 1987 a. 332; 1993 a. 27 s. 439; Stats. 1993 s. 254.30; 1993 a. 450.

SUBCHAPTER III

RADIATION PROTECTION

254.31 Definitions. In this subchapter:

(1) "By-product material" means any of the following:

(a) Radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(b) The tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(2) "Decommissioning" means conducting final operational activities at a nuclear facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material and to carry out any other activities necessary to prepare the site for postoperational care.

(2m) "General license" means a license, under requirements prescribed by the department by rule, to possess, use, transfer or acquire by-product material or devices or equipment utilizing by-product material without the filing of a license application by a person or issuance of licensing confirmation by the department.

(3g) "Ionizing radiation" means all radiations capable of producing ions directly or indirectly in their passage through matter, including all of the following:

(a) Electromagnetic radiations, including X-rays and gamma rays.

(b) Particulate radiations, including electrons, beta particles, protons, neutrons, alpha particles and other nuclear particles.

(3p) "Nonionizing radiation" means electromagnetic radiation, other than ionizing radiation, and any sonic, ultrasonic or infrasonic wave.

(4) "Nuclear facility" means any reactor plant, any equipment or device used for the separation of the isotopes of uranium or plutonium, the processing or utilizing of radioactive material or handling, processing or packaging waste; any premises, structure, excavation or place of storage or disposition of waste or by-product material; or any equipment used for or in connection with the transportation of such material.

(4p) "Radiation" means both ionizing and nonionizing radiation.

(5) "Radiation generating equipment" means a system, manufactured product or device or component part of such a product or device that, during operation, is capable of generating or emitting ionizing radiation without the use of radioactive material. "Radiation generating equipment" does not include a device that emits nonionizing radiation.

(6) "Radiation installation" is any location or facility where radiation generating equipment is used or where radioactive material

is produced, transported, stored, disposed of or used for any purpose.

(9) "Radiation source" means radiation generating equipment or radioactive material.

(9m) "Radioactive material" includes any solid, liquid or gaseous substance which emits ionizing radiation spontaneously, including accelerator-produced material, by-product material, naturally occurring material, source material and special nuclear material.

(10) "Source material" means any material except special nuclear material, which contains by weight 0.05 per cent or more of uranium, thorium, or any combination thereof.

(11) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the nuclear regulatory commission determines to be special nuclear material; or any material artificially enriched by any of the foregoing. Special nuclear material does not include source material.

(11g) "Specific license" means a license, under requirements prescribed by the department by rule, to possess, use, manufacture, produce, transfer or acquire radioactive material or devices or equipment utilizing radioactive material.

(11m) "Transuranic" means a radioactive material having an atomic number that is greater than 92.

(12) "X-ray tube" means any electron tube that is contained in a device and that is specifically designed for the conversion of electrical energy into X-ray energy.

History: 1977 c. 29; 1985 a. 29; 1993 a. 27 ss. 227, 477; Stats. 1993 s. 254.31; 1993 a. 491; 1999 a. 9.

254.33 Public policy. Since radiations and their sources can be instrumental in the improvement of the health and welfare of the public if properly utilized, and may be destructive or detrimental to life or health if carelessly or excessively employed or may detrimentally affect the environment of the state if improperly utilized, it is hereby declared to be the public policy of this state to encourage the constructive uses of radiation and to prohibit and prevent exposure to radiation in amounts which are or may be detrimental to health. It is further the policy for the department to advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries; and, in general, to conform as nearly as possible to nationally accepted standards in the promulgation and enforcement of rules.

History: 1985 a. 29; 1993 a. 27 s. 225; Stats. 1993 s. 254.33; 1995 a. 27 ss. 6332, 9116 (5); 1999 a. 9.

254.335 Agreements with the U.S. nuclear regulatory commission transition. (1) The governor may, on behalf of the state, enter into agreements with the U.S. nuclear regulatory commission, as provided in 42 USC 2021 (b), to discontinue certain federal licensing and related regulatory authority with respect to by-product material, source material and special nuclear material and to assume state regulatory authority.

(2) Any person who, on the effective date of an agreement specified under sub. (1), possesses a license issued by the U.S. nuclear regulatory commission that is subject to the agreement is considered to possess a specific license issued under s. 254.365 (1) (a) or to fulfill requirements specified for a general license under s. 254.365 (1) (b). The specific license expires 90 days after the date of receipt by the person from the department of a notice of expiration of the license or on the date of expiration that was specified in the license issued by the U.S. nuclear regulatory commission, whichever is earlier.

History: 1999 a. 9.

254.34 Powers and duties. (1) The department is the state radiation control agency and shall do all of the following:

(a) Promulgate and enforce rules, including registration and licensing of sources of ionizing radiation, as may be necessary to prohibit and prevent unnecessary radiation exposure. The rules

may incorporate by reference the recommended standards of nationally recognized bodies in the field of radiation protection and other fields of atomic energy, under the procedure established by s. 227.21 (2). The rules for by-product material, source material and special nuclear material may be no less stringent than the requirements under 42 USC 2011 to 2114 and regulations adopted under 42 USC 2011 to 2114.

(am) A rule identical to a rule specified under par. (a) may be promulgated by a state agency other than the department and an ordinance identical to a rule specified under par. (a) may be enacted by a local governmental unit, but no rule may be promulgated or ordinance may be enacted that differs from a rule under par. (a) and relates to the same subject area except as provided under ss. 166.03 (2) (b) 6., 293.15 (8) and 293.25.

(b) Administer this subchapter and the rules promulgated under this subchapter.

(c) Develop comprehensive policies and programs for the evaluation, determination and reduction of hazards associated with the use of radiation that are compatible with requirements of the U.S. nuclear regulatory commission for the regulation of by-product material, source material and special nuclear material. The department shall maintain all of the following records:

1. Files of all license applications, issuances, denials, transfers, renewals, modifications, suspensions and revocations under s. 254.365.

2. Files of all registrants under s. 254.35 and any related administrative or judicial action.

(d) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions and industries.

(e) Encourage, participate in or conduct studies, investigations, training, research and demonstrations relating to the control of radiation hazards, the measurement of radiation, the effects on health of exposure to radiation and related problems as it deems necessary or advisable for the discharge of its duties under this subchapter.

(f) Collect and disseminate health education information relating to radiation protection as it deems proper.

(g) Review and approve plans and specifications for radiation sources submitted pursuant to rules promulgated under this subchapter; and inspect radiation sources, their shielding and immediate surroundings and records concerning their operation for the determination of any possible radiation hazard.

(h) With respect to radon and with the department serving as the lead agency, do all of the following:

1. Develop and disseminate current radon information to the news media, builders, realtors and the general public.

2. Coordinate a program of measuring radon gas accumulation, including use of the radon canister counting system, in educational institutions, nursing homes, low-income housing, public buildings, homes, private industries and public service organizations.

3. Work with staff of local health departments to perform home surveys and diagnostic measurements and develop mitigation strategies for homes with elevated radon gas levels.

4. Develop training materials and conduct training of staff of local health departments, building contractors and others in radon diagnosis and mitigation methods.

5. Develop standards of performance for the regional radon centers and, from the appropriation under s. 20.435 (5) (ed), allocate funds based on compliance with the standards to provide radon protection information dissemination from the regional radon centers.

(2) The department may:

(a) Enter, at all reasonable times, any private or public property for the purpose of investigating conditions relating to radiation control.

(b) Accept and utilize grants or other funds or gifts from the federal government and from other sources, public or private, for carrying out its functions under this subchapter. The studies, investigations, training and demonstration may be conducted independently, by contract, or in cooperation with any person or any public or private agency, including any political subdivision of the state.

History: 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 399; 1989 a. 31; 1993 a. 27 s. 228; Stats. 1993 s. 254.34; 1995 a. 27 ss. 6333, 6334, 9116 (5); 1997 a. 27; 1999 a. 9 ss. 2456 to 2462, 2475.

254.345 Assessment of Fee. (1) The department may annually assess a fee of 36% of the U.S. nuclear regulatory commission license application fee and materials license annual fee, for any licensee of the U.S. nuclear regulatory commission in this state. The fee amounts shall be used by the department for the department's activities under this subchapter. The department may revise the fee amounts by rule.

(2) This section does not apply after December 31, 2002.

History: 1999 a. 9.

254.35 Registration of ionizing radiation installations.

(1) **APPLICATION.** For every site in this state that has an ionizing radiation installation that is not exempted by this section or the rules of the department, the person in control of the installation, including installations in sites that are administered by a state agency or in an institution under the jurisdiction of a state agency, shall, prior to operation, register the ionizing radiation installation with the department. No ionizing radiation installation may be operated thereafter unless the site has been duly registered by January 1 of each year and a notice of the registration is possessed by the person in control. The application for registration shall be made on forms provided by the department which shall be devised to obtain any information that is considered necessary for evaluation of hazards. Multiple radiation sources at a single radiation installation and under the control of one person shall be listed on a single registration form. Registration fees shall be levied in accordance with sub. (3). Registration alone does not imply approval of manufacture, storage, use, handling, operation or disposal of the radiation installation or radioactive materials, but serves merely to inform the department of the location and character of radiation sources. Persons engaged in manufacturing, demonstration, sale, testing or repair of radiation sources are not required to list such sources on the registration form.

(2) **AMENDED REGISTRATION.** If the person in control increases the number of sources, source strength, rated output or energy of radiation produced in any installation, he or she shall notify the department of the increase prior to operation on the revised basis. The department shall record the change in the registration. No registration is transferable from one premises to another or from one person to another. If the person in control intends to transfer control of ownership of the radiation installation to another person, at least 15 days before the final transfer the registrant shall notify the department of the transfer and the intended transferee shall file under sub. (1) an application for registration. If any installation is discontinued, the person in control shall notify the department within 30 days of the discontinuance.

(3) **REGISTRATION FEES.** (a) An annual registration fee under pars. (b) to (fm) shall be levied for each site registration under this section. An additional penalty fee of \$25, regardless of the number of X-ray tubes or generally licensed devices, shall be required for each registration whenever the annual fee for renewal is not paid prior to expiration of the registration. No additional fee may be required for recording changes in the registration information.

(b) For a site having an ionizing radiation installation serving physicians and clinics, osteopaths and clinics, chiropractors or hospitals that possesses radioactive materials in any quantity, the fee shall be at least \$36 for each site and at least \$44 for each X-ray tube.

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(c) For a podiatric or veterinary site having an ionizing radiation installation, the fee shall be at least \$36 for each site and at least \$44 for each X-ray tube.

(d) For a dental site having an ionizing radiation installation, the fee shall be at least \$36 for each site and at least \$30 for each X-ray tube.

(f) For an industrial, school, research project or other site having an ionizing radiation installation, the fee shall be at least \$36 for each site and at least \$44 for each X-ray tube.

(fm) For any site that has generally licensed devices that are not exempted by the department, the fee shall be at least \$100 for each site and at least \$50 for each device that contains at least 370 MBq or 10 mCi of cesium-137; 37 MBq or 1.0 mCi of cobalt-60; 3.7 MBq or 0.1 mCi of strontium-90; or 37 MBq or 1.0 mCi of a transuranic.

(g) The fees under this subsection shall be as stated unless the department promulgates rules to increase the annual registration fee for a site having an ionizing radiation installation, for an X-ray tube or for generally licensed devices that are not exempted by the department.

(4) EXEMPTIONS. After initial registration under sub. (1), the department may exempt from annual registration any source of radiation that the department finds to be without undue radiation hazard.

History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5); 1999 a. 9.

254.365 Licensing of radioactive material. (1) LICENSE REQUIRED. No person may possess, use, manufacture, transport, store, transfer or dispose of radioactive material or a device or item of equipment that uses radioactive material or may operate a site that uses radioactive material that is not under the authority of the U.S. nuclear regulatory commission unless one of the following applies:

(a) The person has a specific license issued by the department.

(b) The person meets general license requirements.

(c) The person possesses a license issued by another state or by the U.S. nuclear regulatory commission that is reciprocally recognized by the department.

(d) The person is exempted from licensure under sub. (7).

(2) APPLICATION. Application for a license under sub. (1) (a) or for reciprocal recognition under sub. (1) (c) shall be made on forms provided by the department.

(3) MODIFICATION OR TERMINATION OF LICENSE. Within 30 days after any change to the information on a license issued under this section, the licensee shall inform the department of the change and the department shall record the changed information. Within 30 days after termination of an activity licensed under this section, the person in control of the activity shall notify the department. The department may require that the person in control submit to the department for approval a plan for decommissioning the activity.

(4) RULES. The department shall promulgate rules for all of the following:

(a) The issuance, modification, suspension, termination and revocation of specific licenses under sub. (1) (a) under the standards specified in s. 254.34 (1) (a).

(b) The requirements for a general license under sub. (1) (b).

(5) FEES AND CHARGES. (a) The department may assess fees, the amounts of which are prescribed by the department by rule, for any of the following:

1. Issuance of an initial or renewal specific license under sub. (1) (a).

2. Annual license maintenance.

3. Issuance of a license amendment.

4. Termination of a license.

5. Issuance of reciprocal recognition of a license for radioactive materials of another state or the U.S. nuclear regulatory commission.

(b) The department may assess a late payment charge of 25% of the specific license renewal fee, in addition to the fee under par. (a) for renewal of a specific license, if payment for renewal of a specific license is not made within 30 days after the license expiration date.

(6) DENIAL, SUSPENSION OR REVOCATION OF LICENSURE. The department may, after a hearing under ch. 227, refuse to issue a license or suspend or revoke a license for failure by the licensee to comply with this subchapter, rules promulgated by the department under this subchapter or any condition of the license.

(7) EXEMPTION. The department may exempt from licensing requirements of this section radioactive material that the department finds is without undue radiation hazard.

NOTE: This section is created eff. 01-01-03 by 1999 Wis. Act 9.

History: 1999 a. 9.

254.37 Enforcement. (1) NOTIFICATION OF VIOLATION AND ORDER OF ABATEMENT. Whenever the department finds, upon inspection and examination, that a source of radiation as constructed, operated or maintained results in a violation of this subchapter or of any rules promulgated under this subchapter, the department shall do all of the following:

(a) Notify the person in control that is causing, allowing or permitting the violation as to the nature of the violation.

(b) Order that, prior to a specified time, the person in control shall cease and abate causing, allowing or permitting the violation and take such action as may be necessary to have the source of radiation constructed, operated, or maintained in compliance with this subchapter and rules promulgated under this subchapter.

(2) ORDERS. The department shall issue and enforce such orders or modifications of previously issued orders as may be required in connection with proceedings under this subchapter. The orders shall be subject to review by the department upon petition of the persons affected. Whenever the department finds that a condition exists that constitutes an immediate threat to health due to violation of this subchapter or any rule or order promulgated under this subchapter, it may issue an order reciting the existence of the threat and the findings pertaining to the threat. The department may summarily cause the abatement of the violation.

(3) RULES. The department shall promulgate and enforce the rules pertaining to ionizing radiation.

(4) JURISDICTION. The circuit court of Dane county shall have jurisdiction to enforce the orders by injunctive and other appropriate relief.

History: 1993 a. 27 s. 231; Stats. 1993 s. 254.37; 1995 a. 27 ss. 6336 to 6338, 9116 (5); 1997 a. 27; 1999 a. 9.

254.38 Emergency authority. (1) IMPOUNDING MATERIALS. The department may impound or order the sequestration of sources of radiation in the possession of any person who is not equipped to observe or who fails to observe safety standards to protect health that are established in rules promulgated by the department.

(2) EMERGENCY ORDERS. If the department finds that an emergency exists concerning a matter subject to regulation under this subchapter that requires immediate action to protect the public health or safety, the department may issue an emergency order without notice or hearing that recites the existence of the emergency and requires such action as is necessary to mitigate the emergency. Any person to whom the order is issued shall immediately comply with the order. A person to whom an emergency order is issued shall be afforded a hearing within 30 days after receipt by the department of a written request for the hearing. An emergency order is effective upon issuance and remains in effect

for up to 90 days after issuance, except that the order may be revoked or modified based on the results of the hearing.

History: 1985 a. 29; 1993 a. 27 s. 232; Stats. 1993 s. 254.38; 1995 a. 27 ss. 6339, 9116 (5); 1999 a. 9.

254.39 Exceptions. (1) Nothing in this subchapter may be interpreted as limiting intentional exposure of persons to radiation for the purpose of analysis, diagnosis, therapy, and medical, chiropractic or dental research as authorized by law.

(2) This subchapter does not apply to on-site activities of any nuclear reactor plant licensed by the U.S. nuclear regulatory commission.

History: 1977 c. 29; 1991 a. 178; 1993 a. 27 s. 233; Stats. 1993 s. 254.39; 1999 a. 9.

254.41 Radiation monitoring of nuclear power plants. The department shall take environmental samples to test for radiation emission in any area of the state within 20 miles of a nuclear power plant. The department shall charge the owners of each nuclear power plant in the state an annual fee of \$30,000 per plant, commencing in fiscal year 1983-84, to finance radiation monitoring under this section. The department may change this annual fee by rule.

History: 1979 c. 221; 1983 a. 27; 1993 a. 27 s. 235; Stats. 1993 s. 254.41.

254.45 Penalties. (1) **GENERAL.** (a) Any person who violates this subchapter or a rule promulgated under this subchapter or a condition of a license or registration issued by the department under this subchapter may be required to forfeit not less than \$100 nor more than \$100,000. Each day of continued violation constitutes a separate offense.

(b) The amount of the forfeiture assessed under par. (a) shall be determined by considering all of the following:

1. The wilfulness of the violation.
2. The person's previous violations, if any, of this subchapter, rules promulgated under this subchapter or conditions of a license or registration issued by the department under this subchapter.
3. The potential danger or actual or potential injury to the environment or to public health caused by the violation.
4. The actual or potential costs of the damage or injury caused by the violation.

(2) **ASSESSMENT OF FORFEITURES; NOTICE.** The department may directly assess forfeitures provided for in sub. (1). If the department determines that a forfeiture should be assessed for a particular violation, the department shall send a notice of assessment to the person. The notice shall specify the amount of the forfeiture assessed and the violation and the statute or rule alleged to have been violated and shall inform the person of the right to hearing under sub. (3).

(3) **HEARING.** A person upon whom a forfeiture is imposed may contest the action by sending, within 10 days after receipt of notice of a contested action, a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days of receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227.

(4) **FORFEITURE PAYMENT AND DISPOSITION.** (a) A person against whom the department has assessed a forfeiture shall pay the forfeiture to the department within 10 days after receipt of the notice under sub. (2) or, if the person contests the assessment, within 10 days after receipt of the final decision after exhaustion of administrative review. If the person petitions for judicial review under ch. 227, the person shall pay the forfeiture within 10 days after receipt of the final judicial decision.

(b) The department shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

(5) **ENFORCEMENT.** The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this section if the forfeiture has not been paid as required under sub. (4). The only issue to be contested in an action under this subsection is whether the forfeiture has been paid.

History: 1993 a. 27 s. 234; Stats. 1993 s. 254.45; 1995 a. 27 ss. 6340, 9116 (5); 1999 a. 9.

SUBCHAPTER IV

RECREATIONAL SANITATION

254.46 Beaches. The department or a local health department shall close or restrict swimming, diving and recreational bathing if a human health hazard exists in any area used for those purposes on a body of water and on associated land and shall require the posting of the area.

History: 1993 a. 27.

254.47 Recreational permits and fees. (1) Except as provided in ss. 250.041 and 254.115, the department or a local health department granted agent status under s. 254.69 (2) shall issue permits to and regulate campgrounds and camping resorts, recreational and educational camps and public swimming pools. No person or state or local government who has not been issued a permit under this section may conduct, maintain, manage or operate a campground and camping resort, recreational camp and educational camp or public swimming pool, as defined by departmental rule.

(2) A separate permit is required for each campground, camping resort, recreational and educational camp and public swimming pool. No permit issued under this section is transferable from one premises to another or from one person, state or local government to another, except that the permit may be transferred from an individual to an immediate family member, as defined in s. 254.64 (4) (a), if the individual is transferring operation of the campground, camping resort, recreational and educational camp or public swimming pool to the immediate family member.

(2m) Except as provided in ss. 250.041 and 254.115, the initial issuance, renewal or continued validity of a permit issued under this section may be conditioned upon the requirement that the permittee correct a violation of this section, rules promulgated by the department under this section or ordinances adopted under s. 254.69 (2) (g), within a period of time that is specified. If the condition is not met within the specified period of time, the permit is void.

(3) Anyone who violates this section or any rule of the department under this section shall be fined not less than \$25 nor more than \$250. Anyone who fails to comply with an order of the department shall forfeit \$10 for each day of noncompliance after the order is served upon or directed to him or her. The department may also, after a hearing under ch. 227, refuse to issue a permit under this section or suspend or revoke a permit under this section for violation of this section or any rule or order the department issues to implement this section.

(4) Permits issued under this section expire on June 30, except that permits initially issued during the period beginning on April 1 and ending on June 30 expire on June 30 of the following year. Except as provided in s. 254.69 (2) (d) and (e), the department shall promulgate rules that establish, for permits issued under this section, permit fees and late fees for untimely permit renewal.

(5) No permit may be issued under this section until all applicable fees have been paid. If the payment is by check or other draft drawn upon an account containing insufficient funds, the permit applicant shall, within 15 days after receipt of notice from the department of the insufficiency, pay by cashier's check or other certified draft, money order or cash the fees from the department, late fees and processing charges that are specified by rules promulgated by the department. If the permit applicant fails to pay all applicable fees, late fees and the processing charges within 15



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

WASHINGTON, D.C. 20555-0001

March 29, 1999

Mr. Paul Schmidt, Chief
Radiation Protection Section
Bureau of Public Health
Department of Health and Family Services
P.O. Box 309
Madison, WI 53701-0309

Dear Mr. Schmidt:

This is in response to your December 29, 1998 letter requesting a review of Wisconsin's proposed Agreement State enabling statutes.

We reviewed the proposed statutes against the Council of State Governments' "Suggested State Legislation Model Radiation Control Act" and for the legislative provisions that are necessary for an Agreement State program. Based on our review, we have three comments, which are contained in the enclosure.

We appreciate the opportunity to review and comment on your proposed enabling legislation. Please feel free to contact me (301) 415-3340 or Lloyd Bolling at (301) 415-2327, if you have any questions on this matter.

Sincerely,

A handwritten signature in black ink, reading "Paul H. Lohaus", is written over the typed name.

Paul H. Lohaus, Director
Office of State Programs

Enclosure:
As stated

COMMENTS ON WISCONSIN STATUTES

1. Section 254.31 (16)

The definition of "source material" is a compatibility category [A] which is an NRC program element that is generally applicable and is needed for common understanding. Your current definition of source material differs from the Atomic Energy Act definition and the definition contained in 10 CFR Part 40.

Action Required

Revise the definition of "source material" to incorporate the language as noted in 10 CFR Part 40.

2. Section 254.34 (1)(a)

The language regarding "less stringent than" does not fully reflect current compatibility policy.

Action Required

Use the words "compatible with" in place of the words "no less stringent than."

3. Section 254.36 (2)

The reciprocity section refers to Federal licensees.

Action Required

Use the words "non-federal agency NRC licensees" in place of the words "federal licenses" in the last sentence.