



STATE OF FLORIDA

DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

DOCKETED

USNRC

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August 19, 1985

Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Docketing and Service Branch  
Washington, D.C. 20555

Gentlemen:

This is written in response to your solicitation of comments on your Advance Notice of Proposed Rulemaking (ANPRM), as it relates to financial responsibility requirements applicable to NRC licensees for clean-up of accidental and unexpected releases of radioactive materials.

We are in support of the need for requiring appropriate financial assurances in the event of an accidental or unexpected release of radioactive materials from a licensee's facility. The state of Florida has recently attempted to address this problem in two ways. Specifically:

1. To require that all licensees pay five percent of their annual fee into a reclamation fund to be used to mitigate against the adverse effects of such a contamination event. This "superfund" is expected to generate approximately \$15,000 per year. Attachment one is a copy of the legislation that requires the payment of this fee.
2. To require the posting of bonds by selected, potentially high risk, licensees. Attachment two is a copy of the legislation that authorizes the Department to develop rules which establish bonding criteria. Attachment three is a copy of the department's Rules which establish the bonding criteria as well as the method by which the department will establish the bond amount.

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1317 WINEWOOD BLVD. • TALLAHASSEE, FL 32301

BOB GRAHAM, GOVERNOR

Acknowledged by card

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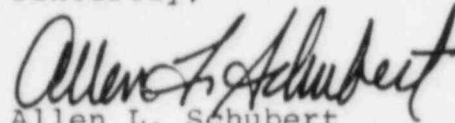
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add Mary Jo Seaman, 62355  
William Almstead, 9604 MRLB

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Secretary of the Commission  
August 19, 1985  
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We hope this information will prove useful to you in development of your Rule. We would be interested in receiving any comments you may have on our approach to dealing with this most difficult problem.

Sincerely,



Allen L. Schubert  
Public Health Physicist Manager  
Radioactive Materials Section  
Office of Radiation Control  
Phone (904) 487-2437

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Attachments

Section 404.122 Florida Statutes  
Section 404.111 Florida Statutes  
Section 100-91.322, Florida Administrative Code

Copy to: Mr. Don Nussbaumer  
Office of State Programs

**404.122 Radiation Reclamation Fund.—**

(1) There is established a Radiation Reclamation Fund which shall be used to pay for measures to prevent or mitigate the adverse effects from a licensee's abandonment of radioactive materials, default on lawful obligations, insolvency, or other inability to meet the requirements of the department or applicable state statutes or rules and to assure the protection of the public health and safety and the environment from the adverse effects of ionizing radiation. Moneys in this fund may not be used for normal operating expenses of the department.

(2) The department may provide by contract, agreement, lease, or license with any person for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to this section, as needed to carry out the purpose of this section.

(3) The existence of the Radiation Reclamation Fund does not make the department liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive material arising from a licensee's abandonment of radioactive material, default on lawful obligations, insolvency, or inability to meet the requirements of the department.

History.—ss. 8, 18, ch. 84-190.

\*Note.—Expires October 1, 1994, pursuant to s. 18, ch. 84-190, and is scheduled for review pursuant to s. 11.61 in advance of that date.

**404.131 Fees.—**

(1) The Department of Health and Rehabilitative Services is authorized to charge and collect reasonable fees for specific and general licenses and for the registration of radiation machines. The fees shall not exceed the estimated costs to the department of performing licensing, registration, inspection, and other regulatory duties. Unless otherwise provided by law, such fees shall be deposited to the credit of the Radiation Protection Trust Fund, to be held and applied solely for salaries and expenses of the department incurred in implementing and enforcing the provisions of this chapter.

(2) The department shall require that each person who possesses a specific license to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess radioactive material annually pay to the department an additional 5 percent of his annual licensing and inspection fee for the purposes of s. 404.122. All fees collected as specified in this subsection shall be deposited in the Radiation Reclamation Fund. These fees are not refundable.

(3)(a) The department is authorized to charge and collect reasonable fees from department licensees and nuclear power plant licensees of the United States Nuclear Regulatory Commission who ship low-level radioactive waste to commercial low-level radioactive waste management facilities. Such fees shall be levied according to the cubic foot amount of low-level radioactive waste shipped quarterly by each department licensee and nuclear power plant licensee of the United States Nuclear Regulatory Commission and shall be set by the department to provide an amount no greater than the costs to the department of surveying the external radiation levels of a vehicle carrying low-level radioactive waste, inspection of the package bracing of a vehicle carrying low-level radio-

active waste, verification of required marking and placarding of a vehicle carrying low-level radioactive waste, examination of required shipping papers, routing of low-level radioactive waste shipments to their final destinations, and ensuring compliance with the provisions of the Southeast Interstate Low-Level Radioactive Waste Compact. Fees shall be \$1.25 per cubic foot for the first year and shall be determined by department rule for succeeding years.

(b) All moneys collected by the department shall be deposited in the Low-Level Radioactive Waste Trust Fund, which is hereby created.

(4)(a) The department is authorized to charge and collect reasonable fees in an amount no greater than the costs to the department of issuing a permit to a person to transport low-level radioactive waste into or through the borders of the state which is destined to a commercial low-level radioactive waste management facility.

(b) All moneys collected by the department shall be deposited in the Low-Level Radioactive Waste Trust Fund.

(5)(a) The department is authorized to collect reasonable fees from industries extracting solid minerals as defined in s. 211.30(1), licensees, and nuclear power plants to meet the actual costs of surveillance activities performed for the purpose of monitoring the radiological environmental impact of activities conducted by such solid mineral extraction industries, licensees, and nuclear power plants.

(b) All moneys collected by the department shall be deposited into the Radiation Protection Trust Fund and used for environmental surveillance activities.

History.—s. 1, ch. 78-373; s. 2, ch. 80-187; s. 2, ch. 81-318; ss. 13, 22, ch. 82-186; ss. 8, 10, 17, 18, ch. 84-190.

\*Note.—Expires October 1, 1994, pursuant to s. 18, ch. 84-190, and is scheduled for review pursuant to s. 11.61 in advance of that date.

\*Note.—The words "and used" were inserted by the editors.

Note.—Former s. 290.131.

**404.141 Prohibited uses.**—[The repeal of this section by s. 2, ch. 81-318, and the expiration of this section pursuant to s. 22, ch. 82-186, were nullified by s. 17, ch. 84-190. Repealed effective October 1, 1994, by s. 18, ch. 84-190, and scheduled for review pursuant to s. 11.61 in advance of that date.]

**404.151 Injunctive relief.**—[Repealed by s. 11, ch. 84-190.]

**404.161 Penalties.—**

(1) Any person who violates any of the provisions of this chapter or any rule promulgated hereunder is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who interferes with, hinders, or opposes any agent, officer, or member of the department in the discharge of his duties under this chapter is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who fails to comply with a lawful order issued pursuant to this chapter within the time fixed by the department or the time allowed for review under s. 404.163, whichever is longer, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who is not an official of another

e October 1, 1994, by s. 18, ch. 84-190, and scheduled for review pursuant to s. 11.61 in advance of that date.]

**404.0617 Siting of commercial low-level radioactive waste management facilities.**—[The expiration of this section pursuant to s. 22, ch. 82-6, was nullified by s. 17, ch. 84-190. Repealed effective October 1, 1994, by s. 18, ch. 84-190, and scheduled for review pursuant to s. 11.61 in advance of that date.]

**404.071 Inspection, agreements, and training programs.**—

(1) Authorized representatives of the department have the authority to enter upon any public or private property at all reasonable times for the purpose of determining compliance with or violation of the provisions of this chapter, the rules and standards adopted hereunder, and the terms and conditions of license or registration.

(2) The Governor may enter into agreements with the Federal Government, other states, or interstate agencies whereby this state will perform, on a cooperative basis with the Federal Government, other states, or interstate agencies, inspections, emergency responses to radiation accidents, and other functions related to the control of radiation.

(3) The department is authorized to institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make such personnel available for participation in any program or programs of the Federal Government, other states, or interstate agencies in furtherance of the purpose of this chapter. Educational programs for the purpose of training or educating persons who possess, use, handle, transport, or service radioactive materials or radiation machines must be approved by the department.

*History.*—s. 1, ch. 78-373, s. 2, ch. 81-318, ss. 7, 22, ch. 82-186, ss. 5, 17, 18, ch. 84-190.

*Note.*—Expires October 1, 1994, pursuant to s. 18, ch. 84-190, and is scheduled for review pursuant to s. 11.61 in advance of that date.

*Note.*—Former s. 290.07.

**404.081 Records.**—[The repeal of this section by s. 2, ch. 81-318, and the expiration of this section pursuant to s. 22, ch. 82-186, were nullified by s. 17, ch. 84-190. Repealed effective October 1, 1994, by s. 18, ch. 84-190, and scheduled for review pursuant to s. 11.61 in advance of that date.]

**404.091 Emergency orders.**—Whenever the department finds that an emergency exists which requires immediate action to protect the public health and safety or the environment, the department may, without notice or hearing, issue an order stating the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provision of this chapter, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately and, on application to the department, shall be afforded a hearing within 10 days. On the basis of such hearing, the emergency order may be continued, modified, or revoked within 30 days after such hearing, as the department deems appropriate under the evidence.

*History.*—s. 1, ch. 78-373, s. 2, ch. 81-318, ss. 9, 22, ch. 82-186, ss. 6, 17, 18, ch. 84-190.

*Note.*—Expires October 1, 1994, pursuant to s. 18, ch. 84-190, and is scheduled for review pursuant to s. 11.61 in advance of that date.

*Note.*—Former s. 290.091.

**404.101 Impounding of sources of radiation.**—

(1) The department shall have the authority, in the event of an emergency, to impound or order the impounding of sources of ionizing radiation and the associated shielding in the possession of any person who is not equipped to observe, or who fails to observe, the provisions of this chapter, the rules promulgated hereunder, or any term or condition of a license or registration.

(2) The department may release such sources of ionizing radiation and the associated shielding to the owner thereof upon terms and conditions in accordance with the provisions of this chapter or may bring an action in the appropriate circuit court for an order directing the disposal of such sources of ionizing radiation and the associated shielding or other disposition so as to protect the public health and safety and the environment. The costs of decontamination, transportation, burial, disposal, or other disposition shall be borne by the owner, licensee, or other responsible party as determined by the department.

*History.*—s. 1, ch. 78-373, s. 2, ch. 81-318, ss. 10, 22, ch. 82-186, ss. 7, 17, 18, ch. 84-190.

*Note.*—Expires October 1, 1994, pursuant to s. 18, ch. 84-190, and is scheduled for review pursuant to s. 11.61 in advance of that date.

*Note.*—Former s. 290.101.

**404.111 Surety requirements.**—

(1)(a) In addition to the fee provided in s. 404.131(2), the department may require a person possessing a specific license to post a bond. The department shall establish, by rule, bonding criteria. In establishing such bonding criteria, the department shall consider:

1. The chemical and physical form of the licensed radioactive material.

2. The quantity of radioactive material authorized.

3. The particular radioisotopes authorized and their subsequent radiotoxicity.

4. The method in which the radioactive material is possessed, used, stored, processed, transferred, or disposed of.

5. The potential cost of decontamination, treatment, or disposal of a licensee's equipment and facilities.

(b) A person who possesses a specific license to commercially treat, store, or dispose of low-level radioactive waste shall be required to post a bond.

(c) A bond deemed acceptable in this state shall be a bond issued by a fidelity or surety company authorized to do business in this state or a cash bond.

(d) The department is authorized to exempt, by rule, any category of licensees from the requirement of paragraph (a) when a determination is made that such exemption will not result in a significant risk to the public health and safety or the environment and will not pose a financial risk to the state.

(e) All state and local government agencies are exempt from this subsection.

(2) In lieu of posting a bond as required under subsection (1), a licensee may:

(a) Deposit with the Treasurer securities of the



type eligible for deposit by insurers under s. 625.52, which securities must have at all times a market value of not less than the amount of the bond required under subsection (1).

(b) Whenever the market value of the securities deposited with the Treasurer is less than 95 percent of the amount required by the department, the licensee shall deposit additional securities or otherwise increase the deposit to the amount required.

(c) The state is responsible for the safekeeping of all securities deposited with the Treasurer under this section. Such securities are not, on account of being in this state, subject to taxation but shall be held exclusively and solely to guarantee the faithful performance by the licensee of its obligations.

(d) The depositing licensee shall have the right to exchange or substitute other securities of like quality and value for securities so on deposit, to receive the interest and other income accruing to such securities, and to inspect the deposit at all reasonable times.

(e) Such deposit shall be maintained unimpaired so long as the licensee continues in business in this state. Whenever the licensee ceases to do business in this state and furnishes the department satisfactory proof that it has discharged or otherwise adequately provided for all its obligations in this state, the Treasurer shall release the deposit securities to the parties entitled thereto, on the receipt of authorization from the department.

(3) A specific licensee who has posted a bond or deposited securities with the department, and has forfeited the same due to abandonment, default, insolvency, or other liability of the licensee to meet the requirements of the department or applicable state statutes or rules, shall have such bonds or securities deposited in the Radiation Reclamation Fund.

(4) Nothing in this section or s. 404.122 may be deemed to relieve any licensee of any civil or criminal liability incurred, nor may anything contained in this section or s. 404.122 be construed to relieve the licensee from his obligation to pay to prevent or mitigate the consequences of abandonment of radioactive materials, default on lawful obligations, insolvency, or other inability to meet the requirements of the department.

History.—s. 1, ch. 78-373, s. 2, ch. 81-318 ss. 11, 22, ch. 82-186 ss. 8, 17, 18, ch. 84-190.

Note.—Expires October 1, 1994, pursuant to s. 18, ch. 84-190 and is scheduled for review pursuant to s. 11.61 in advance of that date.

Note.—Former s. 296.111.

#### 404.121 Perpetual care trust funds.—

(1) The department may require a licensee to deposit funds quarterly into a trust fund known as the Perpetual Care Trust Fund when it is deemed that there is a reasonable possibility that the licensed facility may eventually cease to operate although still containing, or having associated with the facility property, licensable radioactive material, including low-level radioactive waste, which will require maintenance, monitoring, surveillance, or other care on a continuing and perpetual basis.

(2) The department shall require a person possessing a commercial low-level radioactive waste management license to deposit in a trust fund, quarterly, funds sufficient to provide for maintenance, monitoring, and surveillance of a facility, to be used after the person possessing such license completes

the closure and postclosure observation and maintenance duties required by applicable federal and state laws and rules.

(3) In order to provide for the proper care and surveillance of facilities subject to subsections (1) and (2), the state may acquire, by gift or transfer from another government agency or private person, any and all lands, buildings, and grounds necessary to fulfill the purposes of this section. Any such gift or transfer is subject to approval and acceptance by the state.

(4) The department may, by lease or license with any person, provide for the operation of a site or facility subject to this section for the purpose of carrying out the provisions of this chapter. Any lessee or licensee operating under the provisions of this subsection shall be subject to the provisions of this section.

(5) The funds required by subsections (1) and (2) shall be established at such rate that interest on the sum of all funds reasonably anticipated as payable shall provide an annual amount equal to the anticipated reasonable costs necessary to maintain, monitor, and otherwise supervise and care for the lands and facilities as required in the interest of public health and safety. The department shall adopt and promulgate rules for the length of time and the amount of funds required to implement a program of maintenance, monitoring, and surveillance of a commercial low-level radioactive waste management facility, to be used after the operator completes the closure and postclosure observation and maintenance duties required by applicable federal and state laws and rules. In arriving at the rate of funds to be deposited, the department shall consider the nature of the radioactive material, including low-level radioactive waste, size and type of facility, estimated future receipts, and estimated future expenses of maintenance, monitoring, and supervision.

(6) Recognizing the uncertainty of the existence of a person or corporation in perpetuity, and that ultimate responsibility to protect the public health and safety must be reposed in a solvent government, without regard to the existence of any particular agency or department thereof, all lands, buildings, and grounds acquired by the state under subsection (3) shall be owned in fee simple absolute by the state and dedicated in perpetuity to the purposes stated in subsection (3). All radioactive material, including low-level radioactive waste, received at such facility and located therein at time of acquisition of ownership by the state becomes the property of the state.

(7) In the event a person licensed by any governmental agency other than this state desires to transfer a facility to the state for the purpose of administering or providing perpetual care, a lump-sum deposit shall be made to a trust fund. The amount of such deposit shall be determined by the department, taking into consideration the factors stated in subsection (5).

(8) All state and local government agencies are exempt from this section.

History.—s. 1, ch. 78-373, s. 2, ch. 81-318 ss. 12, 22, ch. 82-186 ss. 9, 17, 18, ch. 84-190.

Note.—Expires October 1, 1994, pursuant to s. 18, ch. 84-190 and is scheduled for review pursuant to s. 11.61 in advance of that date.

Note.—Former s. 296.121.

#### 404.122

(1) There shall be a fund which shall be known as the Radiation Reclamation Fund. The fund shall be established by the department and shall be used to meet the requirements of this section. The fund shall be established by the department and shall be used to meet the requirements of this section. The fund shall be established by the department and shall be used to meet the requirements of this section.

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History.—s. 1, ch. 78-373, s. 2, ch. 81-318 ss. 13, 23, ch. 82-186 ss. 10, 19, 20, ch. 84-190.

Note.—Expires October 1, 1994, pursuant to s. 18, ch. 84-190 and is scheduled for review pursuant to s. 11.61 in advance of that date.

#### 404.131

(1) The department shall establish a fund to be known as the Radiation Reclamation Fund. The fund shall be established by the department and shall be used to meet the requirements of this section. The fund shall be established by the department and shall be used to meet the requirements of this section.

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(3)(a) The fund shall be used to meet the requirements of this section. The fund shall be established by the department and shall be used to meet the requirements of this section. The fund shall be established by the department and shall be used to meet the requirements of this section.

Specific Authority: 404.051, 404.061, 404.081, 404.141, F.S.  
Law Implemented: 404.022, 404.051(1)(2)(4)(11), 404.061(2),  
404.081(1), F.S.  
History: New July 17, 1985

PART III E  
BONDING

10D-91.322 Bonding of Persons Licensed Pursuant to Subpart 3C.

(1) Any applicant or licensee who is not exempt by the provisions of this subpart shall provide a performance bond.

(a) The bond shall be payable to the State of Florida and shall be in an amount determined by the Department as sufficient to provide for the protection of the environment and the public health and safety in the event of abandonment, insolvency or other inability of the licensee to meet the requirements of the Department. The Department shall use Schedule E of this part to determine the amount of the bond required for each applicant or licensee. The mathematical product of the risk factors will be the amount of the required bond in dollars. In the event that an applicant or licensee feels that the amount of the bond determined by the use of the applicable risk factors is inappropriate, he may submit evidence to the Department in support of a change to the bond amount. The Department shall determine whether the evidence supports the requested change in the bond amount.

(b) An applicant or licensee may apply to the Department for exemption from the requirement of a bond if he can demonstrate that funds will accrue to the State of Florida which are sufficient to provide for the protection of the environment and the public health and safety in the event of abandonment, insolvency or other inability of the licensee to meet the requirements of the Department. If the Department does not grant the exemption from the requirement of a bond, the licensee may request a hearing in accordance with the provisions of Chapter 120, Florida Statutes.

(c) Licensees must provide the required bond within 90 days after being given notice by the Department of the requirements of a bond and its amount.

(d) The Department may re-evaluate, at any time, the adequacy of an existing bond or guaranty and may require an adjustment by either increasing or decreasing the amount of the bonding or guaranty required.

(e) A bond may be issued by a fidelity or surety company authorized to do business in the State of Florida or it may be a cash bond. The bond must initially provide for at least 24 months of coverage from the date of issuance and at no time thereafter shall the period of coverage be less than 12 months, for as long as the license remains in effect.

(f) The Department may order the bond to be forfeited if it finds any of the following:

1. The facility or site has been abandoned;

2. The licensee is insolvent; or

3. The licensee is unable to perform to the satisfaction of the Department.

(g) Upon determining that a bond shall be forfeited, the Department shall issue a notice to that effect.

(3) The following are exempt from the provisions of this subpart:

(a) Other governmental agencies;

(b) Educational institutions accredited by the Southern Association of Colleges and Schools and such other educational institutions as may be specifically exempted by the Department if the Department determines that such exemption will not endanger the public health, safety and welfare.

(c) Licensees of the State Licensing Board for the Healing Arts and those medical facilities possessing or using radioactive materials for medical purposes when supervised by such licensees.

(d) Any licensee whose mathematical product of the risk factors in Schedule E is less than 15,000.

Specific Authority: 404.051, 404.061, 404.111, 404.141, F.S.

Law Implemented: 404.022, 404.051(1)(4), 404.061(2), 404.111, 404.141, F.S.

History: New July 17, 1985

PART III  
SCHEDULE A  
EXEMPT CONCENTRATIONS

Element (atomic number)	Isotope	Column I Gas concentration uCi per ml	Column II Liquid and solid concentration uCi per ml
Antimony (51)	Sb-122		3X10 <sup>-4</sup>
	Sb-124		2X10 <sup>-4</sup>
	Sb-125		1X10 <sup>-3</sup>
Argon (18)	Ar-37	1X10 <sup>-3</sup>	
	Ar-41	4X10 <sup>-7</sup>	
Arsenic (33)	As-73		5X10 <sup>-3</sup>
	As-74		5X10 <sup>-4</sup>
	As-76		2X10 <sup>-4</sup>
	As-77		8X10 <sup>-4</sup>
Barium (56)	Ba-131		2X10 <sup>-3</sup>
	Ba-140		3X10 <sup>-4</sup>
Beryllium (4)	Be-7		2X10 <sup>-2</sup>
Bismuth (83)	Bi-206		4X10 <sup>-4</sup>
Bromine (35)	Br-82	4X10 <sup>-7</sup>	3X10 <sup>-3</sup>
Cadmium (48)	Cd-109		2X10 <sup>-3</sup>
	Cd-115m		3X10 <sup>-4</sup>
	Cd-115		3X10 <sup>-4</sup>
Calcium (20)	Ca-45		9X10 <sup>-5</sup>

PART III  
SCHEDULE E  
RISK FACTORS FOR PURPOSES OF BONDING (10D-91.322)

Radioisotopes	Risk Factors	Physical Form	Risk Factors
U-nat, U-235, U-238, and associated decay products	1	Non-encapsulated form	20
Transuranics, Ra-226, Ra-228, Th-230, Th-228, Pa-231, Ac-227, I-225, I-129	50	Single encapsul- ated or source plated	3
Th-nat, Th-232, Sr-90, Ra-223, Ra-224, U-232, I-126, I-131, I-133	5		
Half-Life of Radioisotope	Risk Factors	Facility and Procedure	Risk Factors
Greater than 6 years	30	Greater than 5000 ft. <sup>2</sup>	
6 months to 6 years	10	-- High Risk	30
10 days to 6 months	5	-- Low Risk	10
		500 to 5000 ft. <sup>2</sup>	
		-- High Risk	10
		-- Low Risk	5
		Less than 500 ft. <sup>2</sup>	
		--High Risk	5
Activity	Risk Factors		Risk Factors
Greater than 100,000 curies	2,000	License issued for storage only	3
10,000 to 100,000 curies	1,000		
1,000 to 10,000 curies	500		
100 to 1,000 curies	200		
10 to 100 curies	30		
1 to 10 curies	2		



Activity	Risk Factors		Risk Factors
License issued for manufacturing, benefication or processing of non-encapsulated radioactive materials	3	Sealed sources -- not contained in a device with integral, solid shielding	3