

# **MEMORANDUM OF AGREEMENT**

## **BETWEEN**

### **THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES**

#### **DIVISION OF HEALTH SERVICE REGULATION – RADIATION PROTECTION SECTION**

## **AND**

### **THE NORTH CAROLINA DEPARTMENT OF LABOR**

#### **OCCUPATIONAL SAFETY AND HEALTH DIVISION**

## **ON**

### **COORDINATING RADIATION PROTECTION PROGRAMS**

#### **I. PURPOSE AND SCOPE**

The purpose of this Memorandum of Agreement (“MOA”) is to set forth the principles of the working relationship between the North Carolina Department of Health and Human Services (“DHHS” or “Department”), Division of Health Service Regulation, Radiation Protection Section (“RPS” or “Division”) and the North Carolina Department of Labor (“DOL”), Occupational Safety and Health Division (“OSH”) in the area of coordinating radiation protection programs. This MOA establishes general procedures for cooperation between the two agencies in order to ensure effective compliance inspections and radiation investigations, and to eliminate duplication of efforts. This MOA delineates RPS’s authority under the North Carolina Radiation Protection Act (“RPA”)<sup>1</sup> and OSH’s authority under the Occupational Safety and Health Act (“OSH Act”)<sup>2</sup> to enter into agreements with other State agencies.

#### **II. BACKGROUND AND GENERAL RESPONSIBILITIES**

The Atomic Energy Act of 1954<sup>3</sup> was promulgated to regulate the use of ionizing radiation sources for the protection of the environment and the public health and safety. Section 2201 (f) authorizes the Nuclear Regulatory Commission to enter into agreements with “any State Government ... to perform such functions on its behalf as may appear desirable.” This section allows the Nuclear Regulatory Commission to delegate the authority to implement and enforce the requirements

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<sup>1</sup> N.C. Gen. Stat. § 104E *et seq.*

<sup>2</sup> N.C. Gen. Stat. § 95-126 *et seq.*

<sup>3</sup> 42 U.S.C. § 2011 *et seq.*

of the Atomic Energy Act to approved state and local agencies. Pursuant to this authority, the Nuclear Regulatory Commission has entered into an agreement with DHHS to implement the regulations contained within the Atomic Energy Act.

N.C. Gen. Stat. § 104E-6 designates DHHS as the State agency empowered to “administer a statewide radiation protection program” for the State.

N.C. Gen. Stat. § 104E-4 further authorizes DHHS to administer “[a] program of effective regulation of sources of [ionizing] radiation for the protection of the occupational and public health and safety . . .” This statute also states that DHHS must “promote an orderly regulatory pattern within the State . . . and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation” to ensure that “duplication of regulation” is minimized. *Id.*

N.C. Gen. Stat. § 104E-11(b) authorizes DHHS to “enter into agreements with . . . other . . . interstate agencies, whereby [DHHS] will perform on a cooperative basis with the . . . other . . . interstate agencies, inspections, emergency response to radiation accidents, and other functions related to the control of radiation.”

OSH was established under the authority of the Occupational Safety and Health Act of North Carolina (“OSH Act,” N.C. Gen. Stat. § 95-126 *et seq.*) which authorizes the Commissioner of Labor to ensure safe and healthful working conditions for every employee, by developing occupational safety and health standards, and by providing training programs, an effective enforcement program, and appropriate reporting procedures.

N.C. Gen. Stat. § 95-149 authorizes the Commissioner of Labor “to enter into contracts with . . . any . . . State agency . . . for the enforcement, administration, and any other application of the provisions of this Article.”

N.C. Gen. Stat. § 95-148 requires the head of each State agency to establish and maintain an effective and comprehensive occupational safety and health program and to provide safe and healthful places and conditions of employment, consistent with the standards promulgated under the OSH Act.

Both RPS and OSH have a responsibility to conduct compliance inspections and to investigate potential radiation hazards or accidents to determine whether any violations of their respective rules and regulations have occurred and, if so, to require correction of these violations. In addition, RPS and OSH, under their separate authority, are directed to give recommendations about what facilities and employers in North Carolina could do to prevent similar radiation hazards or accidents from occurring in the future.

Much of the information required to meet the objectives of the two agencies is similar. Therefore, it is in the best interest of the agencies and the public that

investigations and information-gathering be conducted in the most efficient and effective manner possible, with minimum duplication of activities.

### **III. COORDINATED ACTIVITIES**

Under this Agreement, OSH and RPS will work in partnership to ensure the safe use of sources of radiation in the workplace. Without yielding statutory authority, both agencies will use the compliance and enforcement tools at their disposal in order to efficiently address referrals, accidents, and complaints regarding radiation use.

#### **A. Regulation of Facilities**

RPS is mandated to regulate all sources of radiation, both ionizing and non-ionizing, including: the inspection and registration of all ionizing radiation producing machines, such as medical and industrial x-ray, and electron microscopes; the inspection and licensing of all radioactive material and accelerators; and the inspection and registration of all tanning equipment.

#### **B. Inspections**

RPS will be the primary inspection agency for sources of ionizing radiation at licensed and registered facilities, and unlicensed or unregistered facilities suspected of possessing sources of ionizing radiation. In addition, RPS will be the primary inspection agency for facilities in possession or use of tanning units for purposes other than personal use. Except for tanning units, OSH will be the primary inspection agency for sources of non-ionizing radiation, that are associated with employee exposures. RPS's licensing, registration, and inspection activities will in no way affect subsequent enforcement action by OSH.

#### **C. Referrals and Notification**

Since RPS and OSH both have a responsibility to investigate potential radiation hazards or accidents in North Carolina, the agencies will coordinate investigation efforts. When RPS intends to investigate a potential radiation hazard or accident, OSH will be notified, and vice versa.

Since RPS inspectors and OSH compliance officers may discover compliance issues within the purview of the other agency's authority, referrals to the other agency will also be encouraged. If an RPS inspector notes a potential ionizing or non-ionizing radiation hazard or any other occupational health and safety violations during a compliance inspection, then the RPS inspector will contact OSH by phone, email, fax, or in person. The OSH Complaint Desk may be reached by calling 919-779-8560 or 1-800-NCLABOR (1-800-625-2267). In addition, RPS will inform OSH of any employee complaints regarding ionizing and non-ionizing radiation in the workplace. Similarly, if an OSH compliance

officer notes a potential situation involving ionizing or non-ionizing radiation hazards where there are possible violations of laws or regulations enforced by RPS (including improper licensing or registration of a radiation source), then the compliance officer will contact RPS by phone, email, fax, or in person. These referrals will be made within fourteen (14) days whenever possible.

When a referral is received by an agency, they will review the complaint and, if appropriate, may choose to arrange a joint inspection of the facility. In addition, OSH will review all enforcement actions, notice of proposed regulatory action, and final contested case orders that relate to employee exposure generated by RPS for potential enforcement action. OSH will also review past enforcement inspections for all unabated serious hazards.

#### **D. Information and Data Sharing**

Both agencies will share records, reports, data, or information obtained by their investigators. The agencies may also make joint requests for information. Neither agency will enter into a settlement agreement with any employer or potentially responsible party that would compromise the sharing of information between the agencies. Both agencies will have access to all factual data gathered by either agency and will collaborate on developing recommendations to enhance safety. RPS will, upon request, provide OSH with information regarding all employee overexposures, suspected employee overexposures, and deficiencies in equipment or work practices that could result in overexposures to ionizing or non-ionizing radiation. OSH will, upon request, provide RPS with copies of all citations that include violations of 29 CFR 1910.97 or 1910.1096.

All requests for information should be done in writing. The originating agency will be responsible for expunging confidential information from reports it generates prior to forwarding the reports to the requesting agency. Each agency will be responsible for maintaining the information it has collected or received pursuant to this MOA. Each agency will be responsible for the release of said information pursuant to public records requests or other legal requests for the information.

Both RPS and OSH will maintain strict confidentiality in compliance with applicable statutes and rules concerning the other agency's inspection, compliance, and enforcement plans or actions. Similarly, when communicating with the media concerning ionizing or non-ionizing radiation violations, accidents, or hazards, representatives of both agencies will be sensitive to the other agency's jurisdiction and confidentiality statutes.

#### **E. Training, Technical, and Professional Assistance**

RPS and OSH will make their training programs related to ionizing and non-ionizing radiation hazards available to each other's agency personnel. The agencies will provide technical and professional assistance to each other during compliance inspections upon request and as resources permit. This will also include equipment sharing as deemed necessary.

#### **F. Legislation and Rulemaking**

Both agencies will communicate to each other all proposed and final legislative actions that have, or could have, an effect on ionizing or non-ionizing radiation protection programs. In addition, all related legislative initiatives proposed by either agency will be communicated to the other agency as early in the legislative process as possible.

Both agencies will provide each other with drafts of proposed NC Administrative Code regulations relating to ionizing and non-ionizing radiation, as early as possible in the rulemaking process, but in all cases prior to the beginning of the public notice and comment period.

### **IV. CONDITIONS OF THE AGREEMENT**

Nothing in this Agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory functions. This Agreement constitutes the entire understanding of the parties with respect to the subject matter contained within; and all prior agreements, understandings, and representations are superseded or canceled in their entirety. This Agreement shall become effective upon the date of last signing by the parties' representatives, and shall continue in effect until and unless it: 1) is modified in writing by mutual consent of both parties; or 2) is terminated by either RPS or OSH. This Agreement may be terminated at any time by either party with thirty (30) days' written notice to the other party, or by mutual written agreement.

IN WITNESS WHEREOF, the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Radiation Protection Section and the North Carolina Department of Labor, Occupational Safety and Health Division have executed this Agreement in duplicate originals, one of which is retained by each of the parties. This Agreement shall become effective upon its full execution by both parties.

 Date: 6/5/19

Kevin Beauregard, CSP, OPM  
Director, North Carolina Occupational Safety & Health Division

 Date: 6/12/2019

Mark Payne  
Director, North Carolina Division of Health Service Regulation