

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

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

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 Department of Health and Human Services (“DHHS”), Division of Health Service Regulation, Radiation Protection Section (“RPS”) and the North Carolina Department of Labor (“DOL”), Division of Occupational Safety and Health (“OSHNC”) in the area of radiation protection. This MOA establishes general procedures for cooperation between the two agencies in order to ensure effective compliance inspections and radiation prevention investigations, and to eliminate duplication. This MOA delineates RPS’s authority under the North Carolina Radiation Protection Act (RPA)¹ and OSHNC’s authority under the Occupational Safety and Health Act (OSH Act)² to regulate radiation sources within North Carolina.

II. BACKGROUND AND GENERAL RESPONSIBILITIES

The Atomic Energy Act of 1954³ 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 of the Atomic Energy Act to approved state and local agencies. Pursuant to this

¹ N.C. Gen. Stat. § 104E *et seq.*

² N.C. Gen. Stat. § 95-126 *et seq.*

³ 42 U.S.C. § 2011 *et seq.*

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.”

The Occupational Safety and Health Division (OSHNC) 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 working man and woman by developing occupational safety and health standards, providing training programs, providing an effective enforcement program, and providing for 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 for State employees, consistent with the standards promulgated under the OSH Act.

Both RPS and OSHNC have a responsibility to conduct compliance inspections and to investigate potential radiation hazards to determine whether violations of their respective rules and regulations have occurred and, if so, to require correction of these violations. In addition, both RPS and OSHNC are directed to give recommendations about what facilities and employers in North Carolina could do to prevent radiation hazards 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, OSHNC and RPS shall work in partnership to ensure the safe use of sources of radiation in the workplace. Without yielding statutory authority, both agencies shall use the compliance and enforcement tools at their disposal in order to efficiently address referrals 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, 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. OSHNC will be the primary inspection agency for sources of non-ionizing radiation with the exception of tanning units. RPS's licensing, registration and inspection activities will in no way affect subsequent enforcement action by OSHNC.

C. Referrals and Notification

Since RPS inspectors and OSHNC compliance officers may discover compliance issues within the purview of the other agency's authority, referrals should be made to the other agency. 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, the inspector shall contact OSHNC by phone, email, fax, or in person. In addition RPS will inform OSHNC of any employee complaints regarding ionizing and non-ionizing radiation in the workplace. Similarly if an OSHNC 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), the compliance officer shall contact RPS by phone, email, fax, or in person. These referrals shall occur within 14 days.

When a referral is received by the other agency, the agency shall review the complaint and if appropriate may choose to arrange with RPS or OSHNC a joint inspection of the facility. In addition, OSHNC shall 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 and will evaluate for enforcement inspection on all unabated serious hazards.

D. Information and Data Sharing

Both agencies should 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 shall have access to all factual data gathered by either agency. RPS shall, upon request, provide OSHNC with information regarding all employee overexposures, suspected employee overexposures, deficiencies in equipment or work practices that could result in overexposures to ionizing or non-ionizing radiation. OSHNC shall, upon request, provide RPS with copies of all citations that include violations of 29 CFR 1910.97 or 1910.1096.

All requests for information shall 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 OSHNC shall 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 or hazards, representatives of both agencies shall be sensitive to the other agency's jurisdiction and confidentiality statutes.

E. Training, Technical, and Professional Assistance

Both agencies should make their training programs related to ionizing and non-ionizing radiation hazards available to each other's agency personnel. The agencies should 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 shall communicate to each other all proposed and final legislative actions that have or could have an effect on the ionizing or non-ionizing radiation program. In addition, all related legislative initiatives proposed by either agency should be communicated to the other agency as early in the legislative process as possible.

Both agencies shall provide with 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 shall be reviewed annually for effectiveness. This agreement shall become effective upon the date of last signing by the parties’ representatives and shall continue in effect unless: 1) the agreement is modified in writing by mutual consent of both parties; or 2) the agreement is terminated by either RPS or by OSHNC. The agreement may be terminated at any time with 30 days written notice to the other party, or by mutual written agreement.

**FOR THE NORTH CAROLINA
DEPARTMENT OF LABOR:**

**FOR THE NORTH CAROLINA
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Date: _____

Date: _____