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James C. Kenney
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**Information Required for Change of Control or Change of Ownership or both for
Radioactive Materials License (to include a name change)**

Pursuant to Subsection B of 20.3.3.317 NMAC, please provide the following information concerning changes of Pursuant control (i.e., transfer of license). The transferor and transferee must sign this form. Please indicate those items which are not applicable.

1. Provide a complete description of the transaction (i.e., transfer of stocks or assets, or merger). Indicate whether the name has changed and include the new name. Include the name and telephone number of a Licensee contact whom the bureau may contact if more information is needed.

A. Description of the transaction:

B. No name change
 New name of Licensee organization: _____

C. No change in Management
 New Management Contact/Title: _____
 Telephone number for New Management Contact: _____

D. No change in contact of person responsible for annual fees
 New contact: _____
 New address for correspondence for annual fees: _____

2. Provide the name of the company or person in control if no change in the name of the Licensee and attach an organizational chart indicating all affiliations of the licensee with other companies (parent corporation, branches, wholly owned subsidiaries, etc.).

3. Describe any changes in personnel or duties that relate to the Licensee Radiation Protection Program (RPP). Include training and experience for new personnel.

A. No changes in personnel having control over Licensee RPP.

Changes in personnel having control over Licensee RPP:

B. No changes in personnel named in the License.

Changes in personnel named in the License (e.g. RSO, AUs) – include training, experience and responsibilities:

4. Describe, in detail, any changes in the organization, location, facilities, equipment or procedures that relate to the licensed Radiation Protection Program. Add a supplemental sheet if more space is needed.

Organization:

Equipment:

Location:

Procedures:

Facility:

Not applicable:

5. Describe the current status of the facility/site. Provide answers to the following questions. Add a supplemental sheet if more space is needed.

Is waste or contamination present at the facility?

How was the presence or absence of waste or contamination determined (records, surveys, or both)? Attach the results from the surveys if surveys were conducted.

If contamination or waste is present at the facility, will decontamination or disposal occur before the transfer?

If not, does the transferee agree to assume full liability for the decontamination of the facility or disposal of the waste?

6. Confirm that all records concerning the safe and effective decommissioning of the facility will be transferred to the transferee or as indicated below. These records include documentation of surveys of ambient radiation levels and fixed and removable contamination, including methods and sensitivity.

Records transferred to:

New licensee Bureau for license termination Transferee N/A

7. Confirm that the transferee will abide by all constraints, conditions, requirements, and commitments of the transferor or that the transferee will submit a complete description of the proposed Licensee program.

_____ will abide by all constraints, conditions,
(transferee)
requirements, and commitments made by the transferor in the radioactive material license

(NM RAM Number)

OR

_____ is providing new commitments, operating
(transferee)
procedures, and Radiation Protection Program with this form.

8. Confirm that the transferee accepts full responsibility for any unresolved inspection items, and any resulting enforcement actions, or the transferee proposes alternative measures for meeting the requirements;

OR

_____ commits to close out all
(transferor)
such actions with the Department before license transfer.

[Note: Both the transferor official and the transferee official must sign this form]

Signature of Transferee Official

Signature/Title Transferor Official

Print Name of Transferee Official/Title

Print Name of Transferor Official/Title

Date

Date

[Note: This is an excerpt from NRC NUREG-1556 vol. 15, Appendix D. The Nuclear Regulatory Commission (NRC) is the federal equivalent of the NMED, the Department. The Department had adopted this guidance for determining the information needed to transfer control of a license]. The following examples are useful for determining when this form is required to be submitted]

Examples of Change of Control

The following examples describe what constitutes a change of control or ownership. These examples are based on previous cases reviewed by NRC.

Direct Change of Control

The transfer of “management-related responsibilities” from one licensee to another constitutes a change of control. For example, The Acme Company applied to transfer control of its possession-only license for the ABC facility to XYZ, Inc. for all maintenance, characterization, decontamination, dismantling, decommissioning, and other management-related responsibilities, including the following:

- Responsibility for safely maintaining the containment vessel and performing characterization activities changed from The Acme Company to XYZ, Inc.
- XYZ, Inc. would take responsibility from The Acme Company for the administration of all facility functions, for radiation safety activities, and for providing on-site management and continuing oversight of production activities.
 - The appointment of members to The Acme Company Radiation Safety Committee and the reporting of the Committee would change from The Acme Company president to an XYZ, Inc. vice president.
 - The president of XYZ, Inc. would have the authority to request audits and would receive audit reports instead of the president of The Acme Company.
 - The responsibility for procedure development and implementation would change from The Acme Company to XYZ, Inc.
 - The responsibility for records retention and reporting would change from The Acme Company to XYZ, Inc.
- The organization chart for the facility would be changed to reflect the addition of XYZ, Inc. as a licensee. Under this arrangement, XYZ, Inc. would be added as a possessiononly licensee for the ABC facility. Except for the above-mentioned management-related responsibilities, The Acme Company’s duties as a licensee would not otherwise be affected. NRC approved the transfer, concluding that XYZ, Inc. was qualified to be a joint holder of the facility license for the management-related functions and that the transfer was otherwise consistent with the applicable provisions of law, regulations, and orders issued by NRC (subject to certain conditions).

Indirect Change of Control

(1) A licensee was a wholly-owned subsidiary of its parent corporation. The licensee was engaged in business associated with Part 30 byproduct material licenses. The parent entity sold its entire interest in the licensee to the individuals serving as President and Vice-Presidents of that subsidiary. This transaction, a sale of 100% of the stock of the NRC-licensed subsidiary, constituted a “transfer of control of any license” for the purposes of Section 184. Before the sale, those who possessed dominion over the full

range of the operations of the parent entity had the authority, if they desired to exercise it, to determine the licensee's activities under the licenses by reason of the licensee's status as a wholly-owned subsidiary. Upon completion of the sale, the parent entity's management necessarily relinquished all right to dictate how the licensed activities should be conducted. Rather, the full right to direct those activities — and thus to control the licenses themselves — became vested in the licensee's new owners, subject to the requirement of conformity to the licenses. Safety Light Corp. (Bloomsburg Site Decontamination), ALAB-931, 31 NRC 350, 363-65 (1990).

(2) A materials licensee, Licensee, merged with another company, Holding Co., which was the wholly-owned subsidiary of Buyer. This merger was accomplished in two steps: (1) Buyer was empowered to designate a majority of Licensee's Board of Directors; (2) Licensee was later merged into Holding Co. In sum, Licensee merged with another company to become a wholly-owned subsidiary of the parent. NRC concluded that an indirect change of control had occurred.

(3) A materials licensee was wholly owned by Parent Corporation. Seventy percent of Parent Corporation's stock was acquired by a holding company. The holding company was, in turn, wholly-owned by Acquiring Corporation. Shortly after Parent Corporation notified NRC of the transaction, Acquiring Corporation stated in a letter to NRC that:

- The transaction would not result in any changes in Parent Corporation's operations relating to the license;
- The transaction would not result in any change to the license, its management, its personnel (including the Radiation Safety Officer), or the licensee's name; and
- Acquiring Company pledged to abide by the terms of the license.

(4) Parent Corporation sold all of the assets of its wholly-owned subsidiary, a materials licensee substantially, to Buyer. Following the sale, the management of the licensee took the form of three bodies with discrete functions:

- Buyer's Board of Directors had ultimate decision-making power, control, and authority over the licensee's operations, including oversight of day-to-day operations and responsibility for the licensee's executives, management and employees.
- A new governing board was established for the licensee. None of its members were affiliated with Buyer, but the board was subject to the ultimate decision and control of Buyer.
- Parent Corporation and Buyer established a committee to advise Buyer on various matters relating to the licensee, including strategic planning and approval of the licensee's Chief Executive Officer.

In addition, Parent Corporation and Buyer entered into an agreement, under which the parties intended the licensee to manage and supervise licensed activities, and maintain full control and authority over licensed materials for the purpose of avoiding a change of control under AEA Section 184. However, Buyer retained elements of control under this agreement, including:

- Buyer is liable for the site (Parent Corporation is to indemnify Buyer when the liability involves licensed materials);

- Buyer is to maintain adequate resources to fund decommissioning; • Buyer agreed to accept full responsibility for open inspection items and any resulting enforcement actions that could have arisen within the licensed facilities prior to and following the sale; and
- Buyer agreed to abide by all constraints, conditions, requirements, representations, and commitments identified in the NRC license.

Following the transaction, Parent Corporation and Buyer share some responsibilities, including paying all fees required to maintain the license and making required filings. The buyer agreed to pay Parent Corporation 50% of the amount required for decommissioning financial assurance. NRC determined that this sale of assets constitute a change of control under 10 CFR 30.34(b), 40.46, and 70.36, requiring prior notification to and consent of NRC. The buyer now has ultimate authority over the conduct of the licensed activities, even though employees of the licensee control daily operations Buyer is empowered to decide when and how the license will be used; the change of ownership, combined with Buyer's extensive managerial authority, allows Buyer to determine the policies of the licensee. In addition, Buyer took on responsibilities in the area of license maintenance and financial assurance for decommissioning.

(5) A materials licensee (who was the transferor) sold its facility to Holding Company. Holding Company is wholly owned by Owner, which created Holding Company to control a number of its subsidiaries, including the licensee. Following the transaction, the licensee continued to operate the facility. The only changes were to the licensee's governing structure:

- The licensee changed its corporate status;
- Holding Company was empowered to elect a majority of the licensee's directors; and
- The licensee's name was not changed, but it is now identified to the public as an affiliate of Holding Company.

NRC determined that this sale constitute a change of control under 10 CFR 30.34(b), requiring prior notification to and consent of NRC, because Owner, through Holding Company, now has ultimate authority over the conduct of licensed activities, even though no changes occurred in personnel or facilities. The owner is empowered to decide when and how the license will be used. The change of ownership, combined with Owner's managerial authority over the Board of Directors, results in control over the license by Owner.

(6) A materials licensee exchanged stock with and merged into Buyer through Holding Company, a wholly-owned subsidiary of Buyer. Holding Company was then dissolved, leaving the licensee a wholly-owned subsidiary of Buyer. The license itself was not transferred to Buyer, and the licensee reported no change in staff responsible for radiation safety. NRC found that this transaction constituted a change of control under 10 CFR 30.34(b), and issued a notice Change of of violation (Severity Level IV) to the licensee, who failed to obtain NRC's prior written consent to the transaction.

No Change of Control

(1)A licensee notified NRC of a management services agreement with a contractor for the oversight of a plant, indicating that neither the agreement nor the specific changes in management would require prior NRC approval. The staff concurred with this assessment because the licensee unequivocally retained ultimate authority and control over, and

responsibility for, safe plant operation and regulatory compliance. Provisions of the agreement that confirmed the licensee's control of plant operations included:

- The licensee retained ultimate responsibility and authority for budgetary controls, operating plans, policies, and procedures, regulatory matters, and the management direction of the plant.
- The licensee retained exclusive authority and responsibility to define the economic life of the plant, as well as to retire and decommission the plant.
- The licensee retained the power and authority to modify or terminate the authority and scope of services to be provided by the contractor.
- Management personnel provided by the contractor were approved by the licensee and served at the licensee's pleasure.
- The licensee retained responsibility for compliance with NRC requirements.
- Licensed operators in the control room were solely the licensee's employees.
- The licensee retained the right to terminate the agreement with or without cause.

In all cases, determining whether a transfer of control has taken place is the Commission's responsibility. Whenever an actual or suspected change in ownership or control may occur, the licensee must inform the Commission in order to comply with the license provisions of 10 CFR 30.34 (or similar provisions found in other sections of Title 10). This notification must include a complete, clear description of the transaction that will enable legal counsel to differentiate between name changes and actual changes of control. All notifications of change of control, as well as suspected changes, will be reviewed by NRC. NRC may request additional supplemental information so that each case may be properly evaluated.

(2) Substantially all the assets of four materials licensees were restructured, resulting in a change in corporate form. All four licensees were affiliated with the same parent, both before and after the transaction. In the case of each licensee, no changes were made to:

- Personnel having control over licensed activities (including the Radiation Safety Officer);
- The use, possession, location, or storage of licensed materials;
- The licensee's organization;
- The licensee's facility;
- The licensee's equipment;
- The licensee's procedures.

Following the restructuring, each licensee:

- Assumed full liability for facility decontamination;
- Agreed to abide by all commitments and representations previously made to NRC by the licensee in its old corporate form;
- Agreed to abide by all constraints, conditions, requirements, representations, and commitments identified in the license; and
- Accepted full liability and responsibility for the site.

Here, the entities and personnel remained the same, except for a change in corporate status. All four licensees were affiliates of the same parent entity prior to and following the transaction. No change of control occurred under 10 CFR 30.34(b); the licensees were not required to obtain NRC's prior written consent to the transaction.

(3) A materials licensee, wholly owned by Parent, sold one division of its operations to Buyer. The division that was sold did not involve licensed activities. Parent retained licensed activities under a different name. Following the sale, Licensee retained full control of and responsibility for licensed activity. However, Buyer owned the facility in which licensed activity took place, and jointly occupied the facility with Licensee. Both Licensee and Buyer wished to conduct licensed activities at the facility, with Buyer's employees conducting licensed activities under the supervision and control of Licensee until Buyer moved to a new facility and obtained its license.

NRC determined that this transaction, a change of ownership, did not constitute a change of control as to Parent and Licensee. The same licensee, under a different name, still controlled the licensed activity, and Licensee's parent did not change.