

David D. Snellings, Jr., Director
 Division of Radiation Control &
 Emergency Management
 Arkansas Department of Health
 4815 West Markham Street, Slot 30
 Little Rock, AR 72205-3867

DEC 21 1999

Dear Mr. Snellings:

I am responding to your October 26, 1999 letter on the licensing of a large irradiator facility.

Your question concerns an applicant who is seeking a license for an irradiator at a facility that previously contained an irradiator facility in the past. Your question is whether the Nuclear Regulatory Commission (NRC) would consider the proposed facility to be a newly constructed facility for purposes of applying the requirements in 10 CFR Section 36.39, which apply to "irradiators whose construction begins after July 1, 1993."

It is our understanding that the facility in question here has not operated as an irradiator since 1994. At that time, the radioactive sealed sources were removed. Subsequently, the product conveyor system and the process control equipment were also removed. Under the previous owner, the facility was decommissioned and the license was terminated in October 1998. Under these conditions, we believe the facility should no longer be considered an "irradiator" for the purposes of applying §36.39. Accordingly, any new irradiator assembled at the site must meet the design requirements of §36.39.

We understand that this is a matter of regulatory interpretation. The intent of the language in the first sentence of §36.39 is to clarify that operating irradiators constructed before July 1, 1993 are not required to disrupt operations in order to implement the design requirements of 10 CFR §36.39. However, in this case, where a new irradiator is being assembled and installed in the building that had once contained an irradiator, we believe that it is appropriate to require the current design requirements as reflected in §36.39. Accordingly, even absent the application of §36.39 in this particular case, we would seek to impose the substantive design requirements through license conditions.

I hope that we have satisfactorily addressed your question.

Sincerely,

Original Signed By:
PAUL H. LOHAUS

Paul H. Lohaus, Director
 Office of State Programs

Distribution:

DIR RF (9-231)

SDroggitis

LMcLean, RSAO R-IV

Arkansas File

DCD (SP08) PDR (YES)

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*See previous concurrence.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 21, 1999

David D. Snellings, Jr., Director
Division of Radiation Control &
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Arkansas Department of Health
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A handwritten signature in black ink, appearing to read "Paul H. Lohaus".

Paul H. Lohaus, Director
Office of State Programs

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DCD (SP08) PDR (YES)

no legal objection

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 4815 West Markham Street
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Dear Mr. Snellings:

I am responding to your October 26, 1999 letter on the licensing of a large irradiator facility.

This is to confirm comments made to you by the staff that a new application for licensing an irradiator facility should be reviewed in accordance with the requirements in 10 CFR Part 36 and NUREG-1556, Volume 6. We do not recommend that a new facility be licensed based on pre-1993 requirements especially given that no original documentation, including as-built drawings and blueprints, was provided to verify seismic structural integrity.

*See IMNS
 INSERT*

10 CFR Part 36, "Licenses and Radiation Safety Requirements for Irradiators" was published on February 9, 1993 and became effective on July 1, 1993. The Agreement States were required to adopt a compatible rule no later than July 1, 1999 in order to maintain compatibility. Alternatively, Agreement States may utilize license conditions which achieve the same objectives as 10 CFR Part 36.

I hope that we have satisfactorily addressed your concerns.

Sincerely,

Paul H. Lohaus, Director
 Office of State Programs

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DCD (SP) / PDR (YES/NO)

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 4815 West Markham Street, Slot 30
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Dear Mr. Snellings:

I am responding to your October 26, 1999 letter on the licensing of a large irradiator facility.

The applicant is planning to reactivate a decommissioned irradiator facility. Your question is whether the Nuclear Regulatory Commission (NRC) would consider the proposed facility to be a newly constructed facility for purposes of applying the requirements in 10 CFR Section 36.39, which apply to "irradiators whose construction begins after July 1, 1993."

It is NRC's view that after an irradiator is decommissioned and the license is terminated, any proposed irradiator at the facility should be considered an irradiator that is not yet constructed. Therefore, the requirements in 10 CFR Section 36.39 would apply.

I hope that we have satisfactorily addressed your concerns.

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STATE PROGRAMS OFFICE TRACKING SYSTEM

ACTIVE PROJECTS

DATE: 10/27/99

PROJECT ID: P-231

STATE OF ARKANSAS REQUESTING OFFICIAL NRC OPINION REGARDING THE FACILITY BEING CONSIDERED A NEW ENTITY AND THUS REQUIRED TO MEET THOSE REQUIREMENTS OF

DATE: 10/27/99

DATE: 11/26/99

BOLLING

DATE: [REDACTED]

DATE: 11/26/99

LETTER TO PAUL LOHAUS FROM DAVID SNELLINGS.

DAVID SNELLING/ARKANSAS

[REDACTED]

[REDACTED]