

MINNESOTA DEPARTMENT OF HEALTH



GUIDANCE CONCERNING BANKRUPTCY INVOLVING RADIOACTIVE MATERIALS PROGRAMS

	<p>Radioactive Materials Unit Minnesota Department of Health P.O. Box 64975 St. Paul, MN 55164-0975 (651) 201-4545</p>
---	--

August 6, 2008

Management Responsibility

The Minnesota Department of Health (MDH) recognizes that effective radiation safety program management is vital to achieving safe and compliant operations. MDH believes that consistent compliance with its rules provides reasonable assurance that licensed activities will be conducted safely. MDH also believes that effective management will result in increased safety and compliance. "Management" refers to the processes for conducting and controlling the radiation safety program and to the individuals who are responsible for those processes and who have authority to provide necessary resources to achieve regulatory compliance.

It is not the intent of MDH to interfere with the business decisions of licensees. MDH's focus is on the health and safety aspects, not on the financial intricacies, of the proposed transaction. MDH is required by statute to ensure that public health and safety is not compromised and to be confident that all efforts are made to ensure that the performance of the radiation safety aspects of the program is not degraded.

It is the licensee's obligation to keep the license current. Should a change a bankruptcy action result in a change to the licensee's program, the licensee must amend the license to reflect that change. If any of the information provided in the original application is to be modified or changed, the licensee must submit an application for a license amendment before the change takes place. Also, to continue the license after its expiration date, the licensee must submit an application for a license renewal at least 30 days before the expiration date.

Persons applying for an initial license should update and modify their pending applications if they are undergoing bankruptcy. Generally, licensee or applicant management has a responsibility for all aspects of the radiation safety program including, but not limited to, the following:

- Radiation safety, security and control of radioactive materials, and compliance with rules;
- Completeness and accuracy of the radiation safety records and all information provided to MDH;
- Knowledge about the contents of the license and application;
- Meticulous compliance with current MDH rules and the licensee's operating and emergency procedures;
- Commitment to provide adequate resources (including space, equipment, personnel, time, and, if needed, contractors) to the radiation protection program to ensure that the public and workers are protected from radiation hazards and that meticulous compliance with rules is maintained;
- Selection and assignment of a qualified individual to serve as the Radiation Safety Officer (RSO) for licensed activities;
- Prohibition against discrimination of employees engaged in protected activities;
- Commitment to provide information to employees regarding the employee protection and deliberate misconduct provisions;
- Notifying MDH in writing, immediately following filing of petition for voluntary or involuntary bankruptcy.

As discussed above, licensee's management has specific responsibilities with regard to bankruptcy. Licensees must notify MDH immediately upon filing for bankruptcy.

Bankruptcy

A licensee's financial condition could affect its ability to control licensed material. Therefore, MDH must be notified so it can assure that appropriate measures to protect the public health and safety have been or will be taken. These measures include:

- Maintaining security of licensed material and contaminated facilities;

- Assuring that licensed material is transferred only to properly authorized MDH, NRC, or other Agreement State licensees;
- Assuring that properly trained and experienced personnel are retained to implement appropriate radiation safety measures.

MDH may share pertinent information with other involved entities (e.g., trustees) so that health and safety issues can be resolved before bankruptcy actions are completed.

There are different types of bankruptcies described in Title 11 of the United States Code. The following discussion outlines the bankruptcy types that may involve MDH.

- Chapter 7 is used primarily by individuals and by businesses that wish to free themselves from debt simply and inexpensively. The debtor may enter Chapter 7 bankruptcy voluntarily or be forced to enter it involuntarily by creditors. The creditors of a debtor, as well as the debtor, have the right under Chapter 11 to convert to a case under Chapter 7.
- Chapter 9 addresses the adjustments of debts of a municipality.
- Chapter 11 is generally used to reorganize a business and allows the debtor to continue its business operations by a plan of reorganization in the hopes it can be returned to a viable state¹. As under Chapter 7, the debtor may enter Chapter 11 bankruptcy either voluntarily or involuntarily.
- Chapter 12 is designed to give special relief to a family farmer with regular income.
- Chapter 13 is used as a rehabilitation vehicle for an individual with regular income whose debts do not exceed specified amounts, and is typically used to budget some of the debtor's future earnings under a plan through which creditors are paid in whole or in part.

The filing of a petition in bankruptcy court triggers the automatic stay provision in Section 362(a) of the United States Bankruptcy Code. This provision stays legal actions against the debtor or against the property of the bankruptcy estate, except in certain limited circumstances that include public health, safety, and environmental obligations.

MDH will review and act on bankruptcy notifications when they occur. MDH procedures for reviewing bankruptcy actions ensure that bankruptcy cases are managed in a fully coordinated manner with all involved MDH staff. Key provisions of these procedures may be summarized as follows:

- MDH will promptly verify any bankruptcy information obtained and ensure that the licensee submits the required written notification.
- MDH will promptly, by telephone or fax, inform:
 - The licensee or trustee, if appointed, that the bankruptcy filing does not relieve the licensee of its obligation to comply with all MDH requirements. Inspections and other MDH regulatory actions will continue after the bankruptcy filing.
 - The Bankruptcy Court that any trustee or receiver in bankruptcy retains the debtor licensee's legal obligations, including public health, safety, and environmental obligations, and must comply with MDH rules and license conditions.

Licensees who have filed for bankruptcy remain responsible for all regulatory requirements. Any person possessing property contaminated with MDH licensed materials, transferred by the licensee before completion of decommissioning, must comply with all applicable MDH requirements, including obtaining or maintaining an MDH license and completing decommissioning. Furthermore, MDH licenses remain in full effect, even beyond their stated expiration date, until terminated in writing by MDH.

¹ A reorganized entity emerging from Chapter 11 bankruptcy must receive written MDH approval prior to its assumption of control over licensed activities. Refer to MDH guidance concerning Change of Control Involving Radioactive Materials Programs.

Following the informal contact, MDH staff will provide written notification to the Bankruptcy Court, any trustee or receiver in bankruptcy, or owner of property contaminated by the licensee's activities, regarding the licensee's obligations to control the site, to decontaminate and decommission the site, and to comply with applicable MDH requirements and the conditions of the license.

MDH will assess the current public health and safety situation at the licensee's facility and any impacts that bankruptcy could have on licensed operations. MDH will make an in-house hazard assessment of the extent of contamination and health risks posed by any contamination present. This assessment will be used to:

- Support any petition to the bankruptcy court for priority disbursements of the bankruptcy estate;
- Determine if action is necessary to secure the site or to take any other action required;
- Decide if additional information is needed from the licensee;
- Issue orders to the licensee or other persons;
- Prepare a list of issues to be addressed;
- Make recommendations as to the need to draw on financial assurance instruments that may have been submitted by the licensee;
- Determine the need for additional legal action by MDH that would require the debtor to decontaminate and decommission the site;
- Determine whether there are MDH administrative proceedings or other litigation pending or anticipated (i.e., civil penalties, fee collection) that may affect MDH staff actions in the bankruptcy proceeding.

Licensees requesting amendment of a current license and persons applying for a new materials license as the result of bankruptcy should do the following submit an amendment using the appropriate MDH regulatory guide.

Termination of Activities

Persons holding a radioactive materials license must notify MDH in writing within 60 days of the expiration of its license of any of the following:

- A decision to cease licensed activities permanently at the entire site (regardless of contamination levels);
- A decision to cease licensed activities permanently in any separate building or outdoor area if they contain residual radioactivity making them unsuitable for release according to MDH requirements;
- No principal activities having been conducted at the entire site under the license for a period of 24 months;
- No principal activities having been conducted for a period of 24 months in any separate building or outdoor area if they contain residual radioactivity making them unsuitable for release according to MDH requirements.

Prior to a license termination, the licensee must:

- Submit a decommissioning plan, if required.
- Conduct decommissioning as required.
- Submit, to MDH a completed "Certificate of Disposition of Materials" (or equivalent information) and a demonstration that the premises are suitable for release for unrestricted use (e.g., results of final survey).
- Send the records important to decommissioning to the MDH.
- If licensed activities are transferred, assigned, or otherwise disposed of, transfer records important to decommissioning to the new licensee.

The licensee must determine whether residual radioactivity is present. A licensee's determination that a facility is not contaminated is subject to verification by MDH inspection.