

June 27, 2003

Mr. William Sinclair, Director  
Division of Radiation Control  
Department of Environmental Quality  
168 North 1950 West  
P.O. Box 144850  
Salt Lake City, UT 84114-4850

Dear Mr. Sinclair:

We have conducted a review of the State of Utah application for an amendment to its Agreement for uranium milling and 11e.(2) byproduct material dated January 2, 2003. The review was conducted by an inter-office staff team. The review was based on the Commission Policy Statement that provides the criteria for new agreements and Office of State and Tribal Programs (STP) Procedure SA-700, "Processing New Agreements."

The review was conducted to determine whether the application contained the information necessary to enable staff to prepare an assessment of the amendment application. The team found that the amendment application provided information on the appropriate major program elements for a uranium milling program and reflected significant effort on the part of your staff. The team also identified several areas where additional clarifying information or documentation is needed. Our comments are contained in Enclosure 1. For your reference, the comments are correlated to the pertinent sections of your draft amendment application. We would also appreciate any comments you might have on the usefulness of the procedure and handbook.

The Commission Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption thereof by States through Agreements," [Effective January 23, 1981 (46 FR 7540), and amended by Policy Statements published July 16, 1981 (46 FR 36969) and July 21, 1983 (48 FR 33376)], specifies the criteria the Commission will apply in making its finding that a proposed Agreement State program is adequate to protect public health and safety and compatible with NRC's regulatory program, as required by the Atomic Energy Act of 1954, as amended. Under this process, the staff prepares a written assessment of the State's program, based on a review of the State's application against the criteria, to support the Commission's finding.

We have shared the enclosed comments with you as they were being developed but we would welcome an opportunity to meet with you to discuss the comments, if needed, and answer any questions concerning the review, the information needed, or steps involved in processing the amended Agreement. Please contact me at 301-415-3340, or Dennis Sollenberger at 301-415-2819 to arrange a meeting or conference call.

Sincerely,

/RA/

Paul H. Lohaus, Director  
Office of State and Tribal Programs

Enclosure:  
As stated

William Sinclair

June 27, 2003

Distribution:

DIR RF

DCD (SP08)

Utah File

PDR (YES✓)

**DOCUMENT NAME: C:\ORPCheckout\FileNET\ML031810623.wpd**

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	STP		STP:DD		STP:D				
NAME	DMSollenberger:gd		JMPiccone (PLohaus for)		PHLohaus				
DATE	06/27/03		06/27/03		06/27/03				

**OFFICIAL RECORD COPY**

## **Comments on the Utah Application for an Amended Agreement for Uranium Mills and Mill Tailings**

1. Page 3, Policy Statement, line 13 of full paragraph. The amendment to the agreement does not include authority for pre-1978 mill tailings and Utah should not imply that this will be included in the new regulatory program. Pre-1978 mill tailings (<0.05 weight percent would be NORM) are not under NRC authority under the AEA, therefore, they cannot be included in an agreement between the NRC and Utah.
2. Page 11, Staffing, line 6 of full paragraph. In the list of courses, please note that NRC does not offer the Radiation Protection Engineering course any more. Therefore, this course should be deleted or it would appear that Utah would not be able to meet its training commitment in the application.
3. Page 12 and 13, Staffing. The numbers in the table at the top of page 13 do not appear to be correct. The total for the table appears to be 380 days not 480 days. The 15 percent contingency for non-direct work seems reasonable. However, there was no contingency for direct work not included in the two tables. The discussion does not include reactive inspection time as well as construction inspections which will be needed for Rio Algom and Plateau Resources as they decommission and close their facilities. Resources for public questions not related to specific major licensing actions, guidance development/changes, minor amendments, and questions from licensees need to be included. Although we believe the staffing level is appropriate, the justification does not fully support the staffing level as drafted.
4. Page 17, first line of first paragraph. This section is worded as though there are actions to be taken and does not acknowledge the rulemakings completed. Page 22 first line of third paragraph has similar wording of actions to be taken when we believe you have completed them.
5. Page 23, end of first partial paragraph. There should be some discussion of the judicial review that is available after the Utah Radiation Control Board has reviewed the decision of the Executive Secretary.
6. Page 23, Licensing Program, first paragraph, line 5. This section does not acknowledge the rulemakings that have been completed.
7. Page 24, Last paragraph, line 5. The last word in the line should be "unrestricted" not "restricted".
8. Page 26, line 4. The Regulatory Guide number "3.111" should be "3.11.1" to be correct. In addition, the NRC has standard review plans for reclamation plans (NUREG-1620) that should be included in the list of guidance documents.
9. Page 29, Rules Equivalent to NRC Regulations, line 1. The reference to "future adoption" does not acknowledge the rulemakings that have been completed. The last paragraph in this section also implies the rulemakings have not been completed. The reference to "50.31(b)" on page 30 should be to "150.31(b)".

10. Page 31, line 4. Editorial nits. Ra-266 should be Ra-226. Th-320 should be Th-230.
11. Page 34, line 2. The word "It is obtaining" should be changed to "Utah has obtained the".
12. The Reporting Material Events (STP Procedure SA -300) referenced in Appendix D as Attachment 7 is the 1998 version. Utah needs to use the current SA-300 version dated May 23, 2001 and properly reference it.
13. Inspection Manual Chapter 2801 referenced in Appendix D is dated 1998. The revised version (2000) should be referenced and used.
14. In section G in the side-by-side regulation comparisons, for Criterion 5B(4), Utah states that their groundwater Class III is "roughly equivalent to an 'exempted aquifer' under the EPA Safe Drinking Water Act/Underground Injection Control Regulations found in 40 CFR 146.4".

Staff does not agree with the above statement and believes that Utah's class III groundwater differs from EPA's definition of an "exempted aquifer". This needs further discussion or the statement should be deleted. [The NRC staff reviewer suggests that Utah delete the statement from the Utah table, since all four groundwater classes in Utah require continued protection, whereas the EPA exempt aquifer does not require protection. Therefore, none of the Utah groundwater classes are similar to the EPA exempt aquifer.]

15. The proposed draft Amendment to the Agreement in Appendix K did not address everything necessary for an 11e.(2) agreement. The NRC drafted a revised amendment to the Utah Agreement for your consideration. Please see attached.

Attachment:  
As stated

AMENDMENT TO AGREEMENT  
BETWEEN THE  
UNITED STATES NUCLEAR REGULATORY COMMISSION  
AND THE STATE OF UTAH  
FOR  
DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY  
AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO  
SECTION 274 OF THE ATOMIC ENERGY ACT, AS AMENDED

WHEREAS, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) entered into an Agreement on March 29, 1984 (hereinafter referred to as the Agreement of March 29, 1984) with the State of Utah under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act) which became effective on April 1, 1984, providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8 and Section 161 of the Act with respect to byproduct materials as defined in Section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

WHEREAS, the Commission entered into an amendment to the Agreement of March 29, 1984 (hereinafter referred to as the Agreement of March 29, 1984, as amended) pursuant to the Act providing for discontinuance of regulatory authority of the Commission with respect to the land disposal of source, byproduct, and special nuclear material received from other persons which became effective on May 9, 1990; and

WHEREAS, the Governor requested that and the Commission agreed to reassert Commission authority for the evaluation of radiation safety information on sealed sources or devices containing byproduct, source or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

WHEREAS, the Governor of the State of Utah is authorized under Utah Code Annotated 19-3-113 to enter into this amendment to the Agreement of March 29, 1984, as amended, between the Commission and the State of Utah; and

WHEREAS, the Governor of the State of Utah has requested this amendment in accordance with Section 274 of the Act by certifying on January 2, 2003 that the State of Utah has a program for the control of radiological and non-radiological hazards adequate to

protect the public health and safety and the environment with respect to byproduct material as defined in Section 11e.(2) of the Act and facilities that generate these materials and that the State desires to assume regulatory responsibility for such materials; and

WHEREAS, the Commission found on [insert date] that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of the Act and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and

WHEREAS, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that the State and the Commission programs for protection against hazards of radiation will be coordinated and compatible; and

WHEREAS, this amendment to the Agreement of March 29, 1984, as amended, is entered into pursuant to the provisions of the Act.

NOW, THEREFORE, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of March 29, 1984, as amended, is amended by adding a new paragraph B. and renumber paragraphs B through D as C through E. Paragraph B will read as follows:

"B. Byproduct materials as defined in Section 11e.(2) of the Act;"

Section 2. Article II of the Agreement of March 29, 1984, as amended, is amended by deleting paragraph E and inserting a new paragraph E to implement the reassertion of Commission authority over sealed sources and devices to read:

- “E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.”

Section 3. Article II of the Agreement of March 29, 1984, as amended, is amended by numbering the current Article as “A” by placing an “A.” in front of the first paragraph and renumbering the subsequent paragraphs A through E as 1 through 5 and by adding the following new section after the current amended language to read:

- “B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:
1. Prior to the termination of a State license for such byproduct material, or for any activity that resulted in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met;
  2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:
    - a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;
    - b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be

transferred to the United States or the State of Utah at the option of the State (provided such option is exercised prior to termination of the license);

- c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment.
- d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;
- e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and
- f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.”



Section 4. Article IX of the 1984 Agreement, as amended, is renumbered as Article X and a new Article IX is inserted to read:

"ARTICLE IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which result in the production of such byproduct material, the State shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation and or long-term surveillance and maintenance of such byproduct material:

- A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such byproduct material and its disposal site is transferred to the United States upon termination of the State license for such byproduct material or any activity that results in the production of such byproduct material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and
- B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site."

This amendment shall become effective on [insert date] and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984, as amended.

Done at Rockville, Maryland, in triplicate, this [day] day of [month, year]

FOR THE UNITED STATES  
NUCLEAR REGULATORY COMMISSION

\_\_\_\_\_  
[insert Chairman's name], Chairman

Done at Salt Lake City, Utah, in triplicate, this [day] day of [month, year]

FOR THE STATE OF UTAH

\_\_\_\_\_  
Michael O. Leavitt, Governor