

December 16, 2004

Mr. Thor M. Strong, Section Chief
Radiological Protection and Medical Waste Section
Michigan Department of Environmental Quality
Post Office Box 30241
Lansing, MI 48909

Dear Mr. Strong:

Thank you for your recent telephone call regarding Michigan's interest in considering an agreement with the U.S. Nuclear Regulatory Commission (NRC) under Section 274 of the Atomic Energy Act. To date, 33 States have signed agreements with the NRC, by which those States have assumed regulatory responsibility over certain byproduct, source, and small quantities of special nuclear material.

As discussed during the call, we would welcome the opportunity to provide a briefing on the Agreement State Program. Enclosed is a general overview of the Agreement State Program. The overview provides background information on the Agreement State Program, the criteria and process to become an Agreement State, and reference material.

If you have any questions or need additional information, please feel free to contact either myself or Shawn Rochelle Smith, of my staff, by e-mail at phl@nrc.gov or srs3@nrc.gov, or by telephone at (301) 415-3340. Ms. Smith has been assigned Project Manager responsibilities for assisting Michigan staff in considering an agreement. I look forward to working with you and your staff in these activities.

Sincerely,

/RA/

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

Enclosures:

1. Overview
2. Agreement Summary
3. Agreement State Map

Thor M. Strong

December 16, 2004

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GENERAL OVERVIEW OF THE AGREEMENT STATE PROGRAM

U.S. NUCLEAR REGULATORY COMMISSION
OFFICE OF STATE AND TRIBAL PROGRAMS

NOVEMBER 2004

ENCLOSURE 1

OUTLINE

I. BACKGROUND

- SECTION 274 OF THE ATOMIC ENERGY ACT
- AGREEMENT STATE STATUS - FACTORS FOR CONSIDERATION
- FUNDING AGREEMENT STATE PROGRAMS

II. DIVISION OF AUTHORITY

- STATE AUTHORITY: CATEGORIES OF AGREEMENT
- AREAS OF AUTHORITY RESERVED TO NRC

III. DETAILS ON BECOMING AN AGREEMENT STATE

- OVERVIEW OF PROCESS TO BECOME AN AGREEMENT STATE

IV. ACTIVITIES PRIOR TO SIGNING AGREEMENT

- REVIEW OF STATE RADIATION CONTROL STATUTES, REGULATIONS, POLICIES, AND PROCEDURES
- FORMAL REQUEST FOR AGREEMENT BY THE GOVERNOR
- POST SUBMITTAL ACTIVITIES

V. TIMELINE FOR PROCESSING AN AGREEMENT

VI. POST AGREEMENT PROGRAM

- EXCHANGE OF INFORMATION
- TECHNICAL ASSISTANCE
- TRAINING INFORMATION
- REVIEWS OF STATE PROGRAMS UNDER SECTION 274j

I. BACKGROUND

SECTION 274 OF THE ATOMIC ENERGY ACT

- Enacted in 1959
- Initiative From States to Regulate Atomic Energy
- Recognizes Interests of States
- Establishes Cooperative Program
- Provides a Mechanism for Transfer of Certain NRC Authority
- Provides for Coordination in Development of Standards
- Reserves Certain Areas for NRC to Regulate
- Modified in 1978 to Direct NRC to Periodically Review Agreement State Programs
- DeConcini Amendment in 1980 Authorizes NRC to Suspend All or Part of an Agreement in an Emergency
- Presently, NRC Regulates about 4,500 Material Licensees. 33 Agreement States Regulate about 17,150 Licensees.
- 2 States Currently Pursuing Agreements; Pennsylvania, Minnesota.

AGREEMENT STATE STATUS - FACTORS FOR CONSIDERATION

- Fulfills Intent of Section 274
- State Radiation Control Agencies Regulate All Radiation Sources
- Regulatory Agency Is Closer to Licensees and Can Generally Be More Responsive to Licensees
- Enhances Core of Knowledgeable Persons at State Level
- Single Regulatory Agency for Most Users
- States Must Fund Program Administration
- Some Licensees May Still Be Subject to More Than One Regulatory Agency
- Requires Coordination Between NRC and States

FUNDING AGREEMENT STATE PROGRAMS

- NRC, As Matter of Policy, Does Not Provide Seed Money to Establish Agreement State Program
- NRC Not Authorized to Provide Operating Funds
- NRC Training, Travel, and Technical Assistance to Be Provided Under Reimbursable Agreements with States. Space Available, No-cost Tuition, NRC Training Available
- NRC Assesses License Fees (10 CFR 170 and 171)
- Over 90% of Material Licensees in US (NRC & State) Are Subject to Fees
- Model Legislation Includes Fee Authorization

II. DIVISION OF AUTHORITY

STATE AUTHORITY: CATEGORIES OF AGREEMENT

- Standard Agreement
 - Authority to Regulate:
 - Byproduct materials as defined in Section 11e(1) of the Atomic Energy Act (material yielded in or made radioactive through the process of producing or utilizing special nuclear material)
 - Source material
 - Special nuclear material in quantities less than critical mass
 - State regulates all categories of licensees except uranium mills and low-level waste facilities
 - At State option, sealed source and device evaluation authority may be retained by NRC
- Uranium Mill Agreement
 - Authority to regulate byproduct materials as defined in Section 11e(2) of the Atomic Energy Act (tailings or wastes produced by the extraction or concentrations of uranium or thorium from ore)
- Low-Level Waste Agreement
 - Authority to regulate land disposal of radioactive waste
- Full Agreement
 - Authority to regulate all of the categories above

AREAS OF AUTHORITY RESERVED TO NRC

- 10 CFR Part 150 - Implementing Regulations
- NRC Retains Authority Over
 - Federal agencies
 - Production and utilization facilities
 - Exports and imports
 - Disposal in the ocean
 - High level waste handling and disposal
 - Transfer of materials to persons exempt from licensing (consumer products)
 - Large quantities of special nuclear material
 - Off-shore waters
 - Certain aspects of mill tailings management

III. DETAILS ON BECOMING AN AGREEMENT STATE

OVERVIEW OF PROCESS TO BECOME AN AGREEMENT STATE

- STP Receives Letter of Intent From Governor
- STP Project Manager Assigned
- State Develops a Draft Request
- NRC Reviews Draft Request for Completeness Only
- State Develops a Complete Formal Request
- Complete Request Includes: Supporting Legislation, Regulations, and Program Description
- Governor Submits Formal Request and Certifies State Has Adequate Program
- Request Includes Supporting Legislation, Regulations, and Program Description
- NRC Staff Evaluation Against 1981 and 1983 Criteria for Agreements, using STP Procedure SA-700
- Commission Approves Publication in the Federal Register for Public Review and Comment
- Commission Approves Agreement
- Chairman/Governor Signing Ceremony
- Orderly Assumption of Authority
- Continued Post-Agreement Exchange-of-Information and Assessment of Program Performance

NRC CRITERIA FOR STATES ENTERING INTO AN AGREEMENT*

- Comprehensive Radiation Protection Standards
- Licensing Program
- Inspection and Enforcement Program
- Adequate Number of Qualified Personnel
- Provisions for Fair and Impartial Administration
- Arrangement for Orderly Transfer of Jurisdiction
- Additional Criteria for States Regulating Uranium or Thorium Mill Tailings
- Additional Criteria for Limited Agreement for Low-Level Waste

* 1981/1983 Policy Statement: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement

ACTIONS NRC MUST TAKE FOR STATE TO BECOME AGREEMENT STATE

- Find the State Program Compatible
- Find the State Program Adequate to Protect Public Health and Safety
- Prepare Staff Assessment Based on 1981 and 1983 Policy Statements
- Publish the Proposed Agreement and Staff's Assessment in the Federal Register for Four Consecutive Weeks
- Arrange for Orderly Discontinuance of NRC Jurisdiction

III. DETAILS ON BECOMING AN AGREEMENT STATE (CONTINUED)

PROVISIONS OF AGREEMENTS

- Effective Date of Transfer
- Continued Compatibility
- NRC Retains Authority in Area of Common Defense and Security and Safeguards for SNM
- Reciprocal Recognition of Licenses
- Termination of the Agreement
- Certain Conditions Regarding Mill Tailings for Those States with Mill Authority

IV. ACTIVITIES PRIOR TO SIGNING AGREEMENT

REVIEW OF STATE RADIATION CONTROL STATUTES, REGULATIONS, POLICIES, AND PROCEDURES

Statutes

- Provides Authority for Governor to Enter into Agreement with the NRC
- Designates the Location of the Program (Agency) and Defines Authority
- Does Not Authorize Regulation in Areas Reserved to Federal Government
- Contains Declaration on Policy, Purpose, Technical Terms, Organization, Responsibilities and Administration, etc.

Regulations

- Review of State Radiation Control Regulations Equivalent to the Following NRC Regulations (State Rules Must be Up-To-Date and Compatible with NRC Rules in Effect at the Time of Agreement Signing)

Program Description

- Review of State Radiation Control Program Description
- Policies, Practices and Procedures for Administration, Licensing, Inspection and Enforcement, Program Personnel and Resources. (Qualifications, Organization, Survey and Laboratory Instrumentation, Forms, Guidance, and Operating Procedures)
- Policies and Procedures Must Be Written. (Reference Existing NRC or Submit Copies of State Procedures)

TWO STEP REVIEW PROCESS

DRAFT REQUEST FOR AGREEMENT BY THE STATE PROGRAM DIRECTOR

- Letter From State Program Director
 - Submit Draft Application Package for Completeness Review
 - NRC Review and Comment on Draft Package

FORMAL REQUEST FOR AGREEMENT BY THE GOVERNOR

- Letter From Governor
 - Specifies categories being requested
 - Certifies State is adequate
 - Certifies State has authority to enter agreement
 - Designates State agency for agreement program
- Enclosures to Letter From Governor
 - Proposed agreement document
 - State radiation control statutes
 - Program description
 - Radiation control regulations

POST SUBMITTAL ACTIVITIES

- Acknowledgment Letter to Governor
- Office Review/Concurrence on Draft Federal Register Notice Containing NRC Assessment of State Program
- Send Draft Federal Register Notice to Commission for Approval and Publication for Once a Week for Four Consecutive Weeks
- Prepare Commission Action Paper with Any Public Comments Considered and with Appropriate Draft Public Notifications
- Agreement Signing

V. TIMELINE FOR PROCESSING AN AGREEMENT (SUBJECT TO REVISION)

- | | |
|---|----------|
| • Part 1 - Review of the Request for an Agreement | 24 weeks |
| • Part 2 - FR Publication and Public Comment Period | 16 weeks |
| • Part 3 - Final Processing and Commission Approval | 13 weeks |

VI. POST AGREEMENT PROGRAM

EXCHANGE OF INFORMATION

- Reports of Unusual Events and Abnormal Occurrences in Agreement States
- Copies of Sealed Source and Device Evaluation, GL Licenses and "E" Licenses Exchanged
- Review of Draft and Final Regulations
- Annual Organization of Agreement States, Inc. (OAS) All Agreement States Meeting
- Monthly Teleconference with OAS
- Other Workshops/Meetings

TECHNICAL ASSISTANCE

- Management Directive 5.7 "Technical Assistance to Agreement States"
- Confirmatory Licensing and Inspection Assistance
 - Handled by correspondence or telephone
 - Casework (minor)
 - Licensing policy
 - Inspection practice
 - Interpretations
- Direct Licensing or Inspection Assistance
 - Inspection
 - License application evaluation
 - Special evaluations and studies
 - Beginning in FY-97, provided under reimbursable agreements
- NRC Office Roles - Regions, STP, NMSS, OGC, NSIR, RES

TRAINING PROGRAM

- NRC Core Courses
 - Applied Health Physics (5 weeks)
 - Health Physics Technology (2 weeks)
 - Inspection Procedures
 - Root Cause/Incident Investigation
 - Licensing Practices and Procedures
 - Diagnostic and Therapeutic Nuclear Medicine
 - Teletherapy and Brachytherapy
 - Industrial Radiography
 - Transportation of Radioactive Materials
- Other Courses
 - Safety Aspects of Well Logging
 - Irradiator Technology
 - Environmental Monitoring
 - Health Physics Engineering

VI. POST AGREEMENT PROGRAM (CONTINUED)

REVIEWS OF STATE PROGRAMS UNDER SECTION 274j

- Integrated Materials Performance Evaluation Program (IMPEP), Management Directive 5.6
- Routine On-Site Review Frequency May be Up to Four Years Based on Program Performance
- Reviews Scaled to the Size of the Agreement State Program
- Other Non-Common Performance Indicators
- Reviews Conducted by Team of NRC Offices (STP, NMSS, Regional) and Agreement State Staff
- Management Review Board (MRB)
- Periodic One-Day NRC/Agreement State Meeting in Years Between IMPEP Reviews

IMPEP REVIEWS FOR AGREEMENT STATES AND NRC REGIONAL OFFICES

- Use five common performance indicators:
 - Technical Staffing and Training
 - Status of Materials Inspection Program
 - Technical Quality of Inspections
 - Technical Quality of Licensing Actions
 - Response to Incidents and Allegations
- Non-common performance indicators, as applicable
 - Legislation and Program Elements Required for Compatibility
 - Sealed Source and Device Evaluation Program
 - Low-Level Radioactive Waste Disposal Program
 - Uranium Recovery Program
 - Regional Fuel Cycle Inspection Program
 - Site Decommissioning Management Plan

STP INTERNAL AND EXTERNAL RELATIONSHIPS

- Office of State and Tribal Programs Director reports to the Deputy Executive Director for Materials, Research and State Programs
- STP has 20 FTE (with 1 vacancy) in Headquarters, 5 Regional State Agreements Officers (RSAOs), and 4 Regional State Liaison Officers (RSLOs)
- As a focal point for Agreement State activities, STP interacts with the Offices of Nuclear Material Safety and Safeguards (NMSS), Nuclear Regulatory Research (RES), General Counsel (OGC), Investigation (OI), Nuclear Security and Incident Response (NSIR), and the NRC Regions.
- Office Director serves as Federal Liaison to the Conference of Radiation Control Program Directors, Inc. (CRCPD)

VII. REFERENCE MATERIAL

- AGREEMENT SUMMARY
- AGREEMENT STATE MAP
- OFFICE OF STATE AND TRIBAL PROGRAMS STAFF
- STP INTERNET RESOURCES, STP HOMEPAGE: www.hsrdoornl.gov/nrc/home.html
 - Directories: State directors and STP staff contact information
 - NRC-State Communications: Agreement State Program Letters and Documents Involving Incidents and Events, Program Management, Training, Technical Topics, etc.
 - Program Reviews: Agreement State review reports including State and NRC correspondence
 - Related Links: Special Documents, NRC Resources, State Web Sites, and other links
 - Device Registry (SS&D) Index:: Index of Radioactive Sealed Sources and Devices by Manufacturer and Model Number
 - NRC Technical Training: Program Administration, Information for Agreement States, and Integrated Course Index
 - Office of State and Tribal Programs Procedures: Guidance for the implementation and coordination of major office-related activities, including SA-200, "Review of State Regulations," and SA-106, "Management Review Boards"
 - NRC Management Directives: MD-5.3, "NRC and Agreement State Working Groups;" MD-5.6, "Integrated Materials Performance Evaluation Program (IMPEP);" MD-5.7, "Technical Assistance to Agreement States;" MD-5.8, "Proposed 274b Agreements with States;" MD-5.9, "Adequacy and Compatibility of Agreement State Programs;" MD-5.10, "Formal Qualifications for Integrated Materials Performance Evaluation Program (IMPEP) Team Members."

AGREEMENT SUMMARY

STATE	DATE OF AGREEMENT	CATEGORIES OF MATERIAL ¹
ALABAMA	10/01/66	A, C, D, E, F
ARIZONA	05/15/67	A, C, D, E, F
ARKANSAS	07/01/63	A, C, D, E
CALIFORNIA	09/01/62	A, C, D, E, F
COLORADO	02/01//68	A, B, C, D, E, F
FLORIDA	07/01/64	A, C, D, E, F
GEORGIA	12/15/69	A, C, D, E, F
IOWA	01/01/86	A, C, D
ILLINOIS	06/01/87	A, B, C, D, E, F
KANSAS	01/01/65	A, C, D, E, F
KENTUCKY	03/26/62	A, C, D, E, F
LOUISIANA	05/01/67	A, C, D, E, F
MASSACHUSETTS	03/21/97	A, C, D, E, F
MAINE	4/01/92	A, C, D, F
MARYLAND	01/01/71	A, C, D, E, F
MISSISSIPPI	07/01/62	A, C, D, E, F
NEBRASKA	10/01/66	A, C, D, E, F
NEVADA	07/01/72	A, C, D, E, F
NEW HAMPSHIRE	05/16/66	A, C, D, E, F
NEW MEXICO	05/01/74	A, C, D, E
NEW YORK	10/15/62	A, C, D, E, F
NORTH CAROLINA	08/01/64	A, C, D, E, F
NORTH DAKOTA	09/01/69	A, C, D, E
OHIO	08/31/99	A, C, D, E, F
OKLAHOMA	9/29/2000	A, C*, D, E
OREGON	07/01/65	A, C, D, E
RHODE ISLAND	01/01/80	A, C, D, E, F
SOUTH CAROLINA	09/15/69	A, C, D, E, F

STATE	DATE OF AGREEMENT	CATEGORIES OF MATERIAL ¹
TENNESSEE	09/01/65	A, C, D, E, F
TEXAS	03/01/63	A, B, C, D, E, F
UTAH	04/01/84	A, C, D, E
WASHINGTON	12/31/66	A, B, C, D, E, F
WISCONSIN	08/11/03	A, C, D

¹Categories of Materials Covered by the 274b Agreement per Management Directive and Handbook 5.8 and Commission decision.

- A. Byproduct materials as defined in Section 11e.(1) of the Atomic Energy Action (Act)
- B. Byproduct materials as defined in Section 11e.(2) of the Act
- C. Source materials
- C* Source material used to take advantage of the density and high-mass property where the use of the specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material;
- D. Special nuclear materials in quantities not sufficient to form a critical mass
- E. The regulation of the land disposal of byproduct, source or special nuclear waste materials received from other persons
- F. 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 NRC