

August 18, 2006

The Honorable Robert Riley
Governor of Alabama
Montgomery, Alabama 36130

Dear Governor Riley:

On behalf of the U.S. Nuclear Regulatory Commission (Commission), I am requesting information regarding the plans of your State for the regulation of certain radioactive materials. A provision of the Energy Policy Act of 2005 (EPAAct) expands the authority of the Commission to regulate radium and certain other radioactive materials, such as those made radioactive in particle accelerators. Currently, the individual States have the authority to regulate these materials.

NRC anticipates promulgating final regulations to implement its regulatory program for the new byproduct materials on February 8, 2007. A plan for the orderly transition of authority, as required by the EPAAct, is expected to be published shortly after the regulations. State Radiation Control Program Directors will be provided detailed information about the plan prior to its publication.

Since your State currently has an Agreement with the Commission pursuant to Section 274b of the Atomic Energy Act of 1954, as amended, the EPAAct provides two options for your State to continue to regulate the subject materials under the existing Agreement, as explained in Enclosure 1. For Commission budgetary and planning purposes, I ask that you provide the information¹ requested in Enclosure 1 within 30 days of your receipt of this letter, if possible.

For your convenience, I have enclosed a list of the States with Agreements under Section 274b (Enclosure 2).

¹ This information request has been approved by OMB 3150-0029, expiration 06/30/07. The estimated burden per response to comply with this voluntary collection is approximately 8 hours. Send comments regarding the burden estimate to the Records and FOIA/Privacy Services Branch (T-5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet e-mail to infocollects@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0029), and NEOB-10202 (3150-0200), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

If you or your staff have questions or need additional information, please contact Ms. Janet Schlueter, Director of the Office of State and Tribal Programs at (301-415-3340 or JRS1@NRC.GOV). The Commission appreciates your cooperation on this matter.

Sincerely,

/RA/

Dale E. Klein

Enclosures:

1. Information Requested from
Existing Agreement States
2. List of Agreement States

Identical letter sent to (for Agreement States):

The Honorable Robert Riley
Governor of Alabama
Montgomery, Alabama 36130

The Honorable Mike Huckabee
Governor of Arkansas
Little Rock, Arkansas 72201

The Honorable Janet Napolitano
Governor of Arizona
Phoenix, Arizona 85007

The Honorable Arnold Schwarzenegger
Governor of California
Sacramento, California 95814

The Honorable Bill Owens
Governor of Colorado
Denver, Colorado 80203

The Honorable Jeb Bush
Governor of Florida
Tallahassee, Florida 32399

The Honorable Sonny Perdue
Governor of Georgia
Atlanta, Georgia 30334

The Honorable Thomas Vilsack
Governor of Iowa
Des Moines, Iowa 50319

The Honorable Rod Blagojevich
Governor of Illinois
Springfield, Illinois 62706

The Honorable Kathleen Sebelius
Governor of Kansas
Topeka, Kansas 66612

The Honorable Ernie Fletcher
Governor of Kentucky
Frankfort, Kentucky 40601

The Honorable Kathleen Blanco
Governor of Louisiana
Baton Rouge, Louisiana 70804

The Honorable Mitt Romney
Governor of Massachusetts
Boston, Massachusetts 02133

The Honorable Robert L. Ehrlich, Jr.
Governor of Maryland
Annapolis, Maryland 21401

The Honorable John E. Baldacci
Governor of Maine
Augusta, Maine 04333

The Honorable Tim Pawlenty
Governor of Minnesota
St. Paul, Minnesota 55155

The Honorable Haley Barbour
Governor of Mississippi
Jackson, Mississippi 39205

The Honorable Michael Easley
Governor of North Carolina
Raleigh, North Carolina 27699

The Honorable John Hoeven
Governor of North Dakota
Bismarck, North Dakota 58505

The Honorable Dave Heineman
Governor of Nebraska
Lincoln, Nebraska 68509

The Honorable John Lynch
Governor of New Hampshire
Concord, New Hampshire 03301

The Honorable Bill Richardson
Governor of New Mexico
Santa Fe, New Mexico 87300

The Honorable Kenny Guinn
Governor of Nevada
Carson City, Nevada 89701

The Honorable George Pataki
Governor of New York
Albany, New York 12224

The Honorable Bob Taft
Governor of Ohio
Columbus, Ohio 43215

The Honorable Brad Henry
Governor of Oklahoma
Oklahoma City, Oklahoma 73105

The Honorable Ted Kulongoski
Governor of Oregon
Salem, Oregon 97301

The Honorable Donald Carcieri
Governor of Rhode Island
Providence, Rhode Island 02903

The Honorable Mark Sanford
Governor of South Carolina
Columbia, South Carolina 29211

The Honorable Phil Bredesen
Governor of Tennessee
Nashville, Tennessee 37243

The Honorable Rick Perry
Governor of Texas
Austin, Texas 78711

The Honorable Jon Huntsman, Jr.
Governor of Utah
Salt Lake City, Utah 84114

The Honorable Christine Gregoire
Governor of Washington
Olympia, Washington 98504

The Honorable Jim Doyle
Governor of Wisconsin
Madison, Wisconsin 53707

For States That Currently Have an Agreement with the Commission

On August 8, 2005, President Bush signed the Energy Policy Act of 2005 (EPAAct). Section 651 of the EPAAct became effective immediately and expanded the definition of byproduct material by adding paragraphs (3) and (4) to Section 11e. of the Atomic Energy Act of 1954, as amended (AEA). This amendment gave regulatory jurisdiction over certain naturally occurring and accelerator produced radioactive materials to the Commission.

Section 651(e) of the EPAAct also authorizes the Commission to issue waivers of the requirements of the Section for up to four years if the Commission determines that a waiver is in accordance with the protection of the public health and safety and promotion of the common defense and security. The Commission issued a waiver on August 31, 2005 (70 FR 51581) to provide a mechanism for the NRC to permit persons to continue to use, and States to continue to regulate, the new byproduct material during the implementation of the EPAAct.

A State that currently has an Agreement with the Commission pursuant to Section 274b of the AEA may continue to regulate the new byproduct materials by adding them to the existing Agreement. This can be accomplished in one of two ways.

1) As provided in Section 651(e) of the EPAAct, the Governor of the State may certify to the Commission that: (a) the State has a program for licensing the new byproduct materials that is adequate to protect the public health and safety, as determined by the Commission; and (b) the State intends to continue to implement the regulatory responsibility of the State with respect to the new byproduct materials. If the Governor makes such a certification to the Commission, the Agreement will be considered to include the new byproduct materials without the need for a formal amendment to the Agreement as provided for by Section 274 of the AEA.

2) The Governor may request, at any time, an amendment to the Agreement as provided in Section 274 of the AEA. Note that the process of amending an Agreement may require more than a year of work to complete the statutory requirements of Section 274.

If a Governor does not provide the certification, or request an amendment to the State's Agreement, the EPAAct requires the Commission to assert regulatory authority over the new byproduct materials on or before August 8, 2009. A Governor may later request the Agreement be amended in accordance with Section 274 of the AEA.

NRC anticipates promulgating final regulations to implement its regulatory program for the new byproduct materials on February 8, 2007. A plan for the orderly transition of authority, as required by the EPAAct, is expected to be published shortly after the regulations. State Radiation Control Program Directors will be provided detailed information about the plan prior to its publication.

For budgetary and planning purposes, the Commission is requesting the following information:

- (1) Do you expect to submit a certification to the Commission, as provided for in Section 651(e) of the Energy Policy Act of 2005, to allow your State to continue to regulate the radioactive materials now defined as byproduct material? (We are not requesting the certification now, additional information will be provided at a later date to assist you through the certification process.)

Enclosure 1

- (2) If you do not expect to submit a certification, do you anticipate requesting an amendment to your Agreement? If so, when do you anticipate (year) you will request such an amendment, or when you would request the amendment to become effective?
- (3) If you do not expect to either submit a certification, or request an amendment to your Agreement, please confirm that you understand that the authority over these materials will transition to the NRC as required by the Energy Policy Act.

The Commission does not need detailed planning information at this time. However, we do need, for budget planning purposes, an understanding of which States intend, or do not intend to regulate Section 11e. (3) and 11e. (4) byproduct materials at this time.

List of Agreement States

The Honorable Robert Riley
Governor of Alabama
Montgomery, Alabama 36130

The Honorable Mike Huckabee
Governor of Arkansas
Little Rock, Arkansas 72201

The Honorable Janet Napolitano
Governor of Arizona
Phoenix, Arizona 85007

The Honorable Arnold Schwarzenegger
Governor of California
Sacramento, California 95814

The Honorable Bill Owens
Governor of Colorado
Denver, Colorado 80203

The Honorable Jeb Bush
Governor of Florida
Tallahassee, Florida 32399

The Honorable Sonny Perdue
Governor of Georgia
Atlanta, Georgia 30334

The Honorable Thomas Vilsack
Governor of Iowa
Des Moines, Iowa 50319

The Honorable Rod Blagojevich
Governor of Illinois
Springfield, Illinois 62706

The Honorable Kathleen Sebelius
Governor of Kansas
Topeka, Kansas 66612

The Honorable Ernie Fletcher
Governor of Kentucky
Frankfort, Kentucky 40601

The Honorable Kathleen Blanco
Governor of Louisiana
Baton Rouge, Louisiana 70804

The Honorable Mitt Romney
Governor of Massachusetts
Boston, Massachusetts 02133

The Honorable Robert L. Ehrlich, Jr.
Governor of Maryland
Annapolis, Maryland 21401

The Honorable John E. Baldacci
Governor of Maine
Augusta, Maine 04333

The Honorable Tim Pawlenty
Governor of Minnesota
St. Paul, Minnesota 55155

The Honorable Haley Barbour
Governor of Mississippi
Jackson, Mississippi 39205

The Honorable Michael Easley
Governor of North Carolina
Raleigh, North Carolina 27699

The Honorable John Hoeven
Governor of North Dakota
Bismarck, North Dakota 58505

The Honorable Dave Heineman
Governor of Nebraska
Lincoln, Nebraska 68509

The Honorable John Lynch
Governor of New Hampshire
Concord, New Hampshire 03301

The Honorable Bill Richardson
Governor of New Mexico
Santa Fe, New Mexico 87300

The Honorable Kenny Guinn
Governor of Nevada
Carson City, Nevada 89701

The Honorable George Pataki
Governor of New York
Albany, New York 12224

The Honorable Bob Taft
Governor of Ohio
Columbus, Ohio 43215

The Honorable Brad Henry
Governor of Oklahoma
Oklahoma City, Oklahoma 73105

The Honorable Ted Kulongoski
Governor of Oregon
Salem, Oregon 97301

The Honorable Donald Carcieri
Governor of Rhode Island
Providence, Rhode Island 02903

The Honorable Mark Sanford
Governor of South Carolina
Columbia, South Carolina 29211

The Honorable Phil Bredesen
Governor of Tennessee
Nashville, Tennessee 37243

The Honorable Rick Perry
Governor of Texas
Austin, Texas 78711

The Honorable Jon Huntsman, Jr.
Governor of Utah
Salt Lake City, Utah 84114

The Honorable Christine Gregoire
Governor of Washington
Olympia, Washington 98504

The Honorable Jim Doyle
Governor of Wisconsin
Madison, Wisconsin 53707