



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

October 11, 2016

Mr. Ryan Schierman
Program Manager of Natural Resources
Wyoming Department of Environmental Quality
Land Quality Division
122 W. 25th Street
Herschler 4W
Cheyenne, WY 82002

Dear Mr. Schierman:

We have reviewed the proposed statutory language for Article 20 received by our office on September 6, 2016. The legislation was reviewed by comparison to the criteria in Section 4.1.1 of the Office of Nuclear Material Safety and Safeguards (NMSS) procedure SA-700 and Handbook, "*Processing an Agreement*" (<https://scp.nrc.gov/procedures/sa700.pdf>). We discussed our review of the legislation with you on September 26, 2016.

As a result of our review, we have five comments that have been identified in the enclosure.

We recommend that you address these comments in addition to the other enabling legislation comments provided in our letter dated September 26, 2016. If the comments can be addressed through other statutes, please provide this information in your draft request for an Agreement. If you would like us to review this information prior to the submittal of your draft request, please let us know. In addition, to assist the State in responding to these comments, you may refer to the 1983 Council of State Governments generic model of a Radiation Control Act in Suggested State Legislation, Volume 42, which can be found at <http://www.crcpd.org/PDF/RadControl.PDF>.

R. Schierman

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If you have any questions regarding the comments, please contact Michelle Beardsley at (610) 337-6942 ((Michelle.Beardsley@nrc.gov), or Stephen Poy at (301) 415-7135 (Stephen.Poy@nrc.gov).

Sincerely,

/RA Pamela J. Henderson for/

Daniel S. Collins, Director
Division of Material Safety, State, Tribal
and Rulemaking Programs
Office of Nuclear Material Safety
and Safeguards

Enclosure:
Comment table

R. Schierman

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Enclosure:
Comment table

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**COMMENTS ON WYOMING REVISED ENABLING LEGISLATION
SENT IN EMAIL DATED SEPTEMBER 6, 2016**

WYOMING SECTION		NRC SECTION (SA-700)	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	Wyoming Statute: §§ 35-11-2001(a)		N/A	N/A	<p>Please replace the language in 35-11-2001 (a) from:</p> <p>“The governor, on behalf of the state, is authorized to contact the nuclear regulatory commission to express the intent of the state of Wyoming to enter into an agreement with the nuclear regulatory commission providing for the assumption by the state of regulatory authority over source material from recovery or milling and byproduct included under section 274 of the Atomic Energy Act of 1954, 42 U.S.C. § 2021, as amended. The nuclear regulatory commission shall maintain regulation over the activities reserved under section 274 of the Atomic Energy Act of 1954, 42 U.S.C. § 2021, as amended.”</p> <p>to the following:</p> <p>The governor, on behalf of the state, is authorized to contact the nuclear regulatory commission to express the intent of the state of Wyoming to enter into an agreement under section 274 of the Atomic Energy Act of 1954, 42 U.S.C. § 2021, as amended with the nuclear regulatory commission providing for the assumption by the state of regulatory authority over source material involved in uranium or thorium recovery or milling and byproduct material as defined in Section 11e.(2) of the Atomic Energy Act of 1954, 42 U.S.C. § 2014, as amended. The nuclear regulatory commission shall maintain regulatory authority over all other source material, Section 11e.(1), (3) and (4) byproduct material and special nuclear material as defined of the Atomic</p>

WYOMING SECTION		NRC SECTION (SA-700)	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>Energy Act of 1954, 42 U.S.C. § 2014, as amended, and the activities reserved under section 274 of the Atomic Energy Act of 1954, 42 U.S.C. § 2021, as amended.</p> <p>This is a global comment. Replace “[s]ource material “from” uranium or thorium milling” with “source material “involved in” uranium or thorium milling.” The current language implies that Wyoming is only obtaining authority over the yellowcake produced at a facility and would not have regulatory authority over alternative or equivalent feeds. This change needs to be made throughout the enabling legislation.</p> <p>We also recommend changing “regulation” to “regulatory authority” in this paragraph.</p>
2	Wyoming Statute: §§ 35-11-2001(b)		N/A	N/A	<p>Please replace the language in 35-11-2001 (b) from:</p> <p>The category of material governed by this article, as agreed upon by the nuclear regulatory commission and the state, is source material involved in the extraction and concentration of uranium and thorium in source material and ores at uranium and thorium milling facilities, and the management and disposal of byproduct material. Throughout this article, this category of material shall be referred to as the source material from recovery or milling and the associated byproduct material. This article does not govern independent commercial laboratory facilities who possess, use, or accept byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954, 42 U.S.C § 2021, as amended. The regulation over 11e.(2) byproduct material at independent commercial laboratory facilities shall remain with the nuclear regulatory commission.</p>

WYOMING SECTION		NRC SECTION (SA-700)	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>to the following:</p> <p>The categories of materials governed by this article, as agreed upon by the nuclear regulatory commission and the state, are source material involved in uranium or thorium recovery or milling and byproduct material as defined in Section 11e.(2) of the Atomic Energy Action of 1954, 42 U.S.C. § 2014. This article does not govern independent commercial laboratory facilities who possess, use, or accept byproduct material as defined under this article. The regulation over independent commercial laboratory facilities shall remain with the nuclear regulatory commission”</p> <p>We also recommend changing “regulation” to “regulatory authority” in this paragraph.</p>
3	Wyoming Statute: §§ 35-11-2003(D)		N/A	N/A	<p>Wyoming statute 35-11-2003(d) states, “Licensees, permittees and applicants for a license or permit shall obtain and grant the department access to inspect their mining operations, source material recovery or milling operations and byproduct material, at such times and frequencies as determined necessary by the department to protect public health and safety.’</p> <p>The phrase, “mining operations,” needs to be removed. The NRC does not have regulatory authority over mining, so the enabling legislation for the Agreement should not mention mining.</p>
4	Wyoming Statute: §§ 35-11-103(j)(i)				<p>The definition of byproduct material needs to say uranium “or” thorium, instead of uranium “and” thorium.</p>

WYOMING SECTION		NRC SECTION (SA-700)	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>The definition of byproduct material needs to be changed to state: "Byproduct material' means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content as defined in section 11(e)(2) of the Atomic Energy Act of 1954, 42 U.S.C. § 2014(e)(2), as amended."</p> <p>Recommend that the sentence regarding independent commercial laboratory facility be removed since it is now in Section 35-11-2001(b).</p>
5	Wyoming Statute: §§ 35-11-103(j)(ii)				<p>Wyoming statute 35-11-103(j)(ii) includes the phrase, "as defined in 10 CFR Part 40.4, as amended, to include."</p> <p>This phrase needs to be removed from the definition of "Recovery or milling" because "recovery or milling" is not defined in 10 CFR § 40.4</p> <p>The definition of "Recovery or milling" needs to be revised to state: "'Recovery or milling' means any activity that generates byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954, 42 U.S.C. §2014(e)(2), as amended."</p>