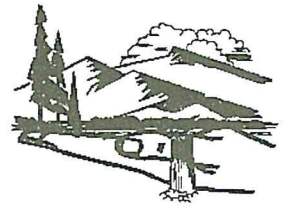




Matthew H. Mead, Governor

# Department of Environmental Quality

*To protect, conserve and enhance the quality of Wyoming's  
environment for the benefit of current and future generations.*



Todd Parfitt, Director

March 2, 2018

Paul Michalak, Chief Agreement State Program  
U.S. Nuclear Regulatory Commission  
Two White Flint North  
11545 Rockville Pike  
Rockville, Maryland 20852-2738

Dear Mr. Michalak:

On March 1, 2018, the Wyoming Department of Environmental Quality/Land Quality Division (LQD) received correspondence from the Nuclear Regulatory Commission (NRC) (ML18032A830) summarizing and updating the status of the outstanding comments on material in Wyoming's Draft Agreement State Application package sent October 26, 2016 (ML 16300A294), and any new comments generated by Wyoming's Final Agreement State Application package sent November 14, 2017 (ML 18032A380). The document contains 172 comments, of which 107 comments originated from the NRC's completeness review of the Wyoming's Draft Agreement (ML 17062A962), 61 comments are based on NRC's review of the final application package (ML 18019B2017), and 4 comments are recommendations for future rulemaking activities presented in the NRC's March 1 2018 letter. Out of the 107 comments provided by the NRC completeness review, Wyoming's November 2017 Final Application submittal resolved all but eight comments. In the NRC's enclosure with the March 1<sup>st</sup> 2018 letter these comments are labeled as resolved. Please refer to the Final Agreement package submitted on November 14, 2017 for a complete discussion of how the LQD responded in a satisfactory manner to each of those comments.

For the additional 73 outstanding comments the LQD is providing the NRC with a revision to the Final Application package (accompanying CD-ROM's), and as an enclosure to this letter a detailed description of changes to the Final Application, in coordination with NRC staff, to ensure the resolution of the outstanding items. The LQD is confident that the revisions will satisfy the NRC's concerns and enable the application to be published in the Federal Register and eventually allow Wyoming to enter into an Agreement with the NRC by September 31, 2018. The LQD urges NRC to act expeditiously to meet this deadline. If LQD can be of any assistance in moving this process please feel free to contact me or my staff.

Sincerely,

Kyle Wendtland, Administrator, Land Quality Division.

## Enclosure

### **Section I:     Comments from the April 20, 2017 letter to Wyoming** **Subsection 4.1 - Legal Elements**

2. On page 7 of 1080, the last paragraph states that the NRC will retain authority over the six 11e.(2) decommissioning sites (i.e., Uranium Mill Tailings Radiation Control Act (UMTRCA) Title II sites) in Wyoming after the transfer of regulatory authority. The draft application deviates from the limited 274b. Agreement as outlined and approved by the Nuclear Regulatory Commission in SRM SECY-16-0084. The NRC requests this language be removed or revised so Wyoming's assumes authority over all 11e.(2) sites in the final application.

**Comment modified** - Proposed agreement needs to be revised to be consistent with the Staff Requirements Memorandum (SRM) for SECY 17-0081 "Status and Resolution of Issues Associated with the Transfer of Six Decommissioning Uranium Mill Sites to the State of Wyoming. (Oct. 4, 2017). Wyoming would assume authority over all 11e.(2) sites except the American Nuclear Corporation (ANC) site in Gas Hills, Wyoming.

**WDEQ RESPONSE:** The WDEQ submitted their Final Application to become an Agreement State in November 14, 2017 in which they explicitly stated WDEQ would assume regulatory control over Title II sites excluding ANC due to its unique scenario (Appendix A of Subsection 4.1.3). In this latest correspondence (ML18032A396) NRC provided additional recommendations on how to structure this language in comments 22 and 30. Once comments 22 and 30 are resolved this comment will be considered resolved.

19. On page 274 of 1080, Wyoming Statute 35-11-2004(c), it states, "[P]rior to terminating a byproduct material license the department shall ensure the ownership of a disposal site and the byproduct material resulting from licensed activity are transferred to: (i) The state of Wyoming; or (ii) [T]he federal government if the state declines to acquire the site, the byproduct material, or both the site and the byproduct material."

It is unclear how Wyoming can separate the site from the byproduct material with regard to the termination of the material license.

Please clarify what Wyoming meant with this statement and how it would affect the termination of material licenses.

**Comment Stands.** The NRC staff are still evaluating the additional information Wyoming has provided regarding § 35-11-2004(c) and will inform Wyoming once the evaluation is finished.



**WDEQ RESPONSE:** The WDEQ is still waiting on NRC's evaluation to resolve this item. It may be prudent to point out that this Statute provision was included in a submittal to NRC on November 19, 2015. WDEQ received comments back on that submittal on September 26, 2016 and October 11, 2016. The concern listed above was not mentioned in that correspondence. It was not until the WDEQ received comments on its Draft application (April 20<sup>th</sup>, 2017) that this issue arose, well past Wyoming's legislative session.

22. On page 329 of 1080, Section 4.1.3.1, subsection (4), it states, “[T]he Commission’s Confirmatory Orders and Modifications (Docket No. 40-4492) with respect to the American Nuclear Corporation site located in the Gas Hills, Wyoming, as accepted and agreed upon by the State will still govern after the proposed Agreement is executed. Following the State’s fulfillment of the obligations agreed upon in the Confirmatory Orders and Modifications, the Commission shall retain authority over the decommissioning of the American Nuclear Corporation Site.”

This deviates from the scope of material of the limited 274b. Agreement as outlined and approved by the Nuclear Regulatory Commission in SRM SECY-16-0084.

Please delete or revise subsection (4) to be consistent with the limited Agreement approved by the Commission

**Comment modified,** 4.1.3.1.(3) should be revised to state, “[T]he provision Article II. C varies from the standard Agreement. In concurrence with the NRC Commission decision in SRM 17-0081, the NRC shall retain authority over the decommissioning of the ANC site because of unique circumstances

**WDEQ RESPONSE:** The change was made and is reflected on page 375 of 1147 Subsection 4.1.3 section 4.1.3.1(3) of the accompanying Final Application Revision 1. The Revision was modified to reference Article II A(14) instead of Article II C as instructed in Comment 30 below. With this change, the comment is resolved.

30. On page 334 of 1080, Article II, Section C, it states, “[N]otwithstanding this Agreement, the Commission shall retain the authority over the decommissioning of all sites under Title II of the Uranium Mill Tailings Radiation Control Act of 1978 (“Title II Sites”) in which the Commission has initiated or is undergoing review of a Long-Term Surveillance Plan, including but not limited to the following Title II Sites.”

Article II C then states that the NRC will retain regulatory authority over 5 UMTRCA Title II sites in decommissioning (e.g., Bear Creek; Pathfinder, Lucky Mc Gas Hills; Umetco, Gas Hills; Western Nuclear Inc.; Exxon Mobile, Highlands) where the NRC has reviewed the long-term plan but not terminated the license.

Article II C is inconsistent with the proposed limited Agreement approved by the Commission where Wyoming would assume regulatory authority over all UMTRCA

Title II sites.

Please remove Article II C to be consistent with the limited agreement approved by the Commission.

**Comment modified.** Please delete Article II C & D. Please revise Article I A. to state, “[B]yproduct materials as defined in Section 11e.(2) of the Act, except as specified in Article II A. (14).” Please revise Article II.A. by adding (14), which states, “[N]otwithstanding this Agreement, the NRC shall retain regulatory authority over the American Nuclear Corporation site docket number 40-4492”

**WDEQ RESPONSE: The change was made as recommended (page 379 of 1147). With this change, the comment is resolved.**

31. On page 334 of 1080, Article II, Section D, it states, “[N]otwithstanding this Agreement, reclamation of the American Nuclear Corporation Site in Gas Hills, Wyoming shall..... the Commission shall retain authority over the decommissioning of the American Nuclear Corporation Site.”

Article II D is inconsistent with the proposed limited Agreement approved by the Commission where Wyoming would assume regulatory authority over all UMTRCA Title II sites.

Please remove Article II D to be consistent with the limited agreement approved by the Commission.

**Comment resolved.** However, we need further discussion regarding referencing the Memorandum of Understanding in the Agreement.

**WDEQ RESPONSE: Article D was removed per instructions in Comment 30. The WDEQ is committed to further discussions to finalize the MOU. This comment is considered resolved.**

#### **Subsection 4.5 - Enforcement Program Elements**

85. On page 859 of 1080, Appendix A to Subsection 4.5, Wyoming has provided information on their proposed enforcement program.

These enforcement elements should include the following:

Wyoming should have enforcement procedures for ensuring the fair and impartial administration of regulatory law.

- a. Wyoming should scale the actions to the seriousness of the violation.
- b. The procedures should establish standard methods of communicating sanctions to the licensee. Wyoming should give written notice using standardized wording and format. Legal counsel should review the wording and format.



- c. The procedures should include a means for tracking the completion of enforcement actions.

For serious or repeated violations of regulatory requirements, the program should use escalated enforcement. Escalated enforcement actions may include:

- a. Administrative or civil monetary penalties;
- b. The modification, suspension, or revocation of the license;
- c. Referral for criminal prosecution. Wyoming needs to submit procedures for escalating enforcement actions.
  - a. Wyoming should scale the sanctions in escalated enforcement cases to the seriousness of the violation. The sanctions should be more serious than routine enforcement.
  - b. The procedures should address notifying the licensee of proposed escalated enforcement actions. The notice should be written, using standard wording and format when practical.
  - c. The enforcement program element manager, or higher, should sign the notices of escalated enforcement.
  - d. Escalated enforcement actions should be coordinated with legal counsel.

Wyoming needs to address the above comment in their enforcement procedures by providing additional detail. The following references can assist the State:

- a. Criteria Policy Statement, criteria 1, 18, and 23
- b. NUREG-1600, NRC Enforcement Policy
- c. NRC Inspection Manual Chapter 2800 and 2801 On December 7, 2017, the NRC provided Wyoming the following modified comment on this section (ML18019B207) after reviewing the revised August Enforcement Procedure submitted on August 16, 2017 (ML17241A115).

#### **Comment Modified**

In your response to this question on the WYDEQ/URP enforcement program, your application should include references to the Department's current enforcement program and/or revise your enforcement procedure in the application to include a discussion of the procedures that will be used to implement the 10 lettered items listed above for this comment. In preparing your response, you can consider the NRC Enforcement Policy, sections 2.0 – 2.2.2 and section 2.3, and section 2.4 of the NRC Enforcement Policy discussion of escalated enforcement.

#### **Comment resolved.**

The NRC staff also identified two typos in the revised Wyoming's Subsection 4.5 Appendix A Enforcement Procedures:

- 1) Subsection 1.3 should reference § 35-11-102 instead of § 35-11-103; and
- 2) the reference to the Policy Statement criteria in Subsection 1.4.1. should also include Criteria 19.

The NRC staff continues to recommend that Wyoming revise Section 3.0 to specifically state that Wyoming will notify licensees of escalated enforcement actions “in writing.” NRC staff also continues to recommend Wyoming to include sample letters and provide examples of handling various situations of non-compliance in the Enforcement Procedures to promote a consistent and fair implementation of Wyoming’s enforcement program

**WDEQ RESPONSE: The WDEQ appreciates the additional suggestions and the following changes were made:**

**Subsection 1.3 reference to 35-11-102 (page 920 of 1147)**

**Subsection 1.4 reference to Criterion 19 (page 920 of 1147)**

**Subsection 3.0 was modified to state URP will notify licensees of escalated enforcement actions in writing (page 922 of 1147).**

**Examples of enforcement actions are included on the DEQ website and are not included within this application. Please follow the link below for a record of previous LQD enforcement actions.**

**<http://deq.wyoming.gov/lqd/resources/enforcement-actions/>**

#### **Subsection 4.7 - Event and Allegation Response Program Elements**

94. On page 986 of 1080, Appendix A to Subsection 4.7, Wyoming has provided information on their proposed event and allegation response procedures. In Appendix A, some of the relevant sections regarding the handling of security related information, procedures for referring allegation to the State Attorney General or State Office of Inspector General equivalent for investigation, information on how the allegations will be tracked in the office and records maintained, and the State response to handling an alleged’s fears of retaliation and granting or revoking confidential source status are absent.

Please review the Allegation Response Procedural Manual to ensure it captures the relevant provisions of Management Directive 8.8 to ensure that the State will have an adequate and compatible program for handling allegations. Criteria Policy Statement, Criteria 1 and 11, NMSS Agreement State Procedure Approval, SA-105, “Reviewing Common Performance Indicator, Technical Quality of Incident and Allegation Activities,” and NMSS Agreement State Procedure Approval, SA-400, “Management of Allegations” can provide additional guidance.

Please revise your procedures for event and allegation response to include all elements in the three documents listed in the previous paragraph.



On December 7, 2017, the NRC provided Wyoming the following modified comment on this section (ML18019B207) after reviewing the revised August revised Event and Allegation Response Procedure submitted on August 16, 2017 (ML17241A115).

**Comment Modified**

Please provide additional information on your procedures for granting and revoking confidential source status mentioned in Subsection 4.7, Appendix A, section 3 of your application. Reference to existing Wyoming procedures can be used in your response. Wyoming can also use Handbook of Management Directive 8.8, “Management of Allegations”, section IV, Granting and Revoking Confidential Source Status, NMSS Agreement State Procedure Approval SA-400, “Management of Allegations”, and section 4.5 of the NRC Allegation Manual or other Agreement State procedures as examples for developing procedures to grant or revoke confidential source status. If you address the comments on the State’s allegation program in Subsection 4.7, Appendix A, requested earlier to this letter (Comments 35 to 61, above), no further action is needed to address this comment.

**Comment stands** pending review of the revised final application package to verify Wyoming implemented the proposed changes to address comments 35 to 61 in the Section II.A. “Comments on Revised Procedures” below which contain comments on Appendix A to Subsection 4.7, Event and Allegation Response Procedural Manual.

**WDEQ RESPONSE: Please refer to Section II Additional Comments on the Draft Wyoming Application for a Limited Agreement related to inspection, Licensing, Allegations, and Enforcement Procedures. Comments 35-61. Comment is considered resolved once Comments 35-61 are considered resolved.**

***October 3, 2016 NRC letter to Wyoming on Part 20 (ML16123A034)***

The following comments are listed as comments 10, 11, and 12 in NRC’s October 3, 2016 letter.

Chapter 1, General Provisions, Section 5, Definitions 20.1003 Definitions:

- Comment 10 – License
- Comment 11 – Licensee
- Comment 12 – Licensed Material

Wyoming has provided unique reciprocity requirements in their enabling legislation. Wyoming needs to provide a definition of License, Licensee, and Licensed Material that also address its unique reciprocity in the regulations.

The definition of “Licensed Material” also needs to be revised to state “... extraction or concentration of uranium or thorium ....” As mentioned in a prior comment, this description needs to be used consistently throughout the regulations.

**Comment modified.** “Licensed Material” should be revised to state “source material or ores ....” instead of “source material and ores.”

**WDEQ. RESPONSE:** The comment above originated as a concern regarding reciprocity and how it relates to the limited Agreement. The WDEQ was able to resolve those concerns and this comment was modified in the April 2017 letter (ML17062A962) to address concerns of changing the language to extraction or concentration and uranium or thorium such that it was consistent with the Atomic Energy Act of 1954 as amended.

The above comment, as listed, was communicated to the WDEQ for the first time on March 1, 2018 (ML10832A396). The WDEQ opinion is that the change requested is unnecessary. The current language as written is in Agreement with NRC Commission Paper SECY 16-0084, and is not in disagreement with the Atomic Energy Act as amended. The Commission paper approved the limited agreement process, and dictated the language to use to characterize the material the State would assume. In the Commission document, "source material and ores" is used 3 times and "source material or ore" is used once. The WDEQ took the language from the SECY paper and if the above requested change were to be made it would be required throughout the URP regulations. Since the WDEQ use is consistent with the Commission Paper, we view this concern as a recommendation and will consider the change at future rulemaking opportunities. This comment is considered resolved.

## **Section II: Additional Comments on the Draft Wyoming Application for a Limited Agreement related to Inspection, Licensing, Allegations, and Enforcement Procedures**

### **Section II.A. Comments on the Revised Procedures**

The following section directly quotes the comments that were included in the NRC’s December 7, 2017 email to Wyoming and uses the same headings and comment numbers. The NRC’s email provided comments on the Wyoming’s revised procedures submitted on August 16, 2017. The current status for each comment is noted in bold.

#### **Subsection 4.3 – Licensing Program Elements**

1. On page 3 of 296, the last paragraph states, “In licensing research and development, medical uses, or other activity involving multiple uses of materials, the State may issue broad scope licenses without evaluating each specific use.”  
Please delete this paragraph. This language is inconsistent with the scope of the Agreement.

**Comment stands,** pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE:** The format of the Final Agreement Package was to mirror SA 700 Appendix A: Handbook for Processing an Agreement and show how we



meet each requirement within our submittal. The purpose of the handbook as stated is "[T]o provide guidance for the preparation and review of a State request for a Section 274(b) Agreement.....[N]RC staff should use the Handbook for guidance in reviewing the request....[T]he State that is requesting an Agreement should use the Handbook for guidance in preparing its request. "

As such the language quoted in the above comment is a reflection of the language in the Handbook for Processing an Agreement under Section 4.3.1.2.

Additionally, in the Agreement Application the bullet item directly under states "As the State of Wyoming will only be authorized to license 11e.(2) byproduct and associated source material, the State will not be issuing broad scope licenses". Wyoming understands the comment, but to delete the paragraph would change the formatting of the Agreement and other sections of the handbook for processing an Agreement quoted would have to be deleted as well (ex. Low level Waste). As such after discussion with the NRC it is the WDEQ understanding that this comment is resolved with no changes.

2. On page 4 of 296, the last paragraph in section 4.3.4 states, "If the NRC will not transfer a licensed site or an application for a site license, and there is no reasonable expectation of an application for a license being submitted in the foreseeable future, the State may assume the authority without having the resources and procedures in place. In this case, information showing that the State has the authority to acquire the resources and adopt appropriate procedures before undertaking the implementation of a program, accompanied by the conceptual description of the program, is sufficient."

This paragraph is not clear. It is understood by NRC staff that this paragraph is referring to the American Nuclear Corporation site. In order to avoid confusion, the NRC staff recommends that Wyoming clarify the intent of this paragraph.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE:** The language quoted in the comment above is taken directly from Section 4.3.4 of the Handbook for Processing an Agreement ( see comment 1 for explanation). The paragraph is not referring to ANC directly but is merely the guidance given by NRC to States for use in preparing their Agreements. As this is NRC language the WDEQ should not be asked to interpret what NRC meant in putting this in guidance. After consultation with the NRC the above comment is considered resolved.

3. On page 6 of 296, the last sentence in section 4.3.6 states, "The State may propose an alternative to transferring licenses, if desired."

This statement does not appear to be applicable to the program. The NRC staff recommends that Wyoming clarify what is meant by an "alternative".

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE:** The language quoted in the comment above is taken directly from Section 4.3.6 of the Handbook for Processing an Agreement (see comment 1 for explanation). As this is NRC language the WDEQ should not be asked to interpret what NRC meant in putting this in their guidance. After consultation with the NRC the above comment is considered resolved.

#### Appendix A to Subsection 4.3 – Licensing Procedure Manual

4. On page 11 of 296, Item 11 refers to NUREG-1757. This reference only refers to materials facilities and is not applicable to uranium recovery facilities. The NRC staff recommends removing this reference from the procedures.

Additionally, the first paragraph under section 2.0 states, “Radioactive materials licensing is a process whereby applicants are approved to receive, possess, and use licensed materials governed by the URP in Wyoming.” The statement excludes on-site disposal of tailings. If these activities of on-site disposal of tailings will be regulated by Wyoming, the NRC staff recommends that Wyoming include activities of on-site disposal of tailings in the statement.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE:** While the WDEQ understands NUREG 1757 excludes uranium recovery, the guidance has useful information that can aid URP staff in evaluating submittals. The following changes were made to the Licensing Procedural Manual (Page 541 of 1147):

11. Applicable portions of NUREG 1757, Consolidated Decommissioning Guidance (~~Financial Assurance requirements contained within explicitly exclude uranium recovery facilities~~ Generally speaking, NUREG 1757 excludes uranium recovery operations, however the guidance contains useful information that may be applied where warranted).

**Additionally, on site disposal of tailings was included in the list as follows (Page 541 of 1147).**

Radioactive materials licensing is a process whereby applicants are approved to receive, possess, and use licensed materials governed by the URP in Wyoming. Radioactive materials licensing may also include onsite disposal of licensed material for applicants approved to do so by the URP in Wyoming

**After consultation with NRC, the following changes as incorporated in the Final Agreement Revision 1 resolves this comment.**



5. On page 12 of 296, under section 2.2, it states, “The license review is based on common sense, scientific and health physics principles.”

Given that common sense is subjective, the NRC staff recommends the phrase be revised to state, “The license review is based on regulations, guidance, scientific, and health physics principles.”

**Comment stands,** pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Change made as recommended ( Page 542 of 1147).  
With changes made this comment is considered resolved.**

6. On page 13 of 296, under section 2.4, it states, “License reviewers should remember that good health physics practices guide the reviewers’ evaluations of any action.”

NRC staff recommends that this sentence be changed so that it states, “License reviewers should remember that good health physics practices, earth science, and engineering principles guide the reviewers’ evaluations of any action.”

**Comment stands,** pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Change made as recommended ( Page 543 of 1147).  
With changes made this comment is considered resolved.**

7. On page 14 of 296, under section 3.1 (c), it states, “Any licensee who does not send the license renewal in a timely manner receives a letter acknowledging URP receipt of the renewal, however this letter may also describe any stipulations or notices resulting from the late submittal. Please note that some renewal submissions may require enforcement action such as a Notice of Violation if the license being renewed has already expired.”

On page 21 of 296, under section 3.12 (c), it states, “The issuance of a new license number when the original license has expired will be reviewed on a case-by-case basis.”

There are several sections in the procedures that refer to expired licenses. NRC staff recommends with regard to expired licenses that these procedures require a site to come into timely renewal and to ensure financial assurance is in place.

**Comment stands,** pending review of the revised final application package to verify Wyoming implemented the proposed change.

**DEQ RESPONSE: The WDEQ appreciates the recommendation and agrees with the suggestion, but feels it has tools and mechanisms already in place to**

**accomplish these objectives. No changes were made as a result of this comment and it is considered resolved.**

8. On page 16 of 296, under section 3.8 (b), it states, “Confirm that all financial assurance documents have been received and are being processed and approved through the WYDEQ Administration Division. The URP cannot issue a new license without payment.”

If the above statement excludes discussion on decommissioning financial assurance, the NRC staff recommends with regard to the above phrase including a discussion on decommissioning financial assurance.

Under section 3.8 (f), it states, “Coordinate with the different divisions within WYDEQ, including LQD, Solid and Hazardous Waste Division (SHWD), Air Quality Division (AQD), and WQD for their concerns with amendments to the license and any aspects of their programs which will be impacted by the license amendment, including permit forms, reclamation, waste management, injection well and monitor well abandonment, etc.”

The above statement discusses license amendments although the section is titled New License Applications. License Amendments are discussed in section 3.10. The NRC staff recommends that Wyoming move the above statement to the more appropriate section.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The WDEQ appreciates the recommendation, the above referenced language does not exclude discussion of decommissioning financial assurances and therefore no page changes are required.**

**In regards to section 3.8(f), the following changes have been made (Page 546 of 1147).**

Coordinate with the different divisions within WYDEQ, including LQD, Solid and Hazardous Waste Division (SHWD), Air Quality Division (AQD), and WQD for their concerns with ~~amendments to the license~~ **the license application** and any aspects of their programs which will be impacted by the license ~~amendment~~ **application**, including permit forms, reclamation, waste management, injection well and monitor well abandonment, etc

**With the above changes, this comment is resolved**

9. On page 18 and 19 of 296, there are sections that refer to the decontamination criteria for the uranium recovery program. It is implied that licensees will be required to remediate to this criteria. The NRC staff recommends that Wyoming provide a



discussion on the applicability of these decontamination criteria. Additionally, the NRC staff recommends including a discussion to long-term boundary care and institutional controls.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The WDEQ appreciates the recommendation, when referencing decontamination criteria the language referencing 10 C.F.R 40 App . Refer to page 548 of 1147 for example) This comment is considered to be resolved.**

10. On page 20 of 296, section 3.11 (f) discusses the coordination with NRC for decommissioning and termination of licenses. There is no discussion of review of the Long Term Surveillance Plan (LTSP) or the Long Term Surveillance Boundary. Wyoming should include their input regarding the Long Term Surveillance Plan and the Long Term Surveillance Boundary in this section.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The WDEQ made changes to Licensing Procedural Manual Section 3.11(f)5 adding the following language (Page 550 of 1147):**

The URP will provide NRC with comments in regards to the Long-Term Surveillance Plan and the Long Term Surveillance Boundary

11. On page 21 of 296, section 3.12 (b) cites the Wyoming equivalent to the NRC Timeliness Rule which can be found in 10 CFR 40.42.

Wyoming should clarify how this rule applies to conventional mills versus in-situ recovery facilities.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ Response: The timeliness rule applies equally to all licenses assumed by the State. If this comment is directed at partial site releases provisions in this regard have already been provided. After consultation with the NRC the comment is resolved.**

12. On page 22 of 296, under section 4.1, it states, "For non-licensed sites, decommissioning includes documenting in correspondence to the site owner that the facility or site is released for unrestricted use."

The NRC staff recommends that Wyoming clarify the term "non-licensed sites" in their procedures. This term is not defined and is not clear in the procedures.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ: The reference to non-licensed sites was removed (Page 552 of 1147). However, the requirement that the URP will inform the appropriate landowners that the facility or sites has been released for unrestricted release was maintained.**

13. On page 22 of 296, under section 4.2, it states, “The dose based criteria for termination of a license are located in Criterion 6 of Appendix A of 10 CFR Part 40.”

Please revise this sentence to state the following: “The concentration based criteria for termination of a license are located in Criterion 6 of Appendix A of 10 CFR Part 40.”

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Criterion 6 of 10 C.F.R. 40 Appendix A. states it is a dose based criteria. The URP will continue to refer to it as a dose based criteria. However, to add clarity the URP added references to 10 CFR 40 Appendix A so that it was clearer on which dose based criteria were applicable (See page 552 of 1147 for an example). In other words, that 10 CFR 40 Appendix A criteria are used, not 10 C.F.R. 20 Subpart E. After consultation with NRC and making the change this comment is considered resolved.**

14. On page 23 of 296, under section 4.2, it states, “The applicant must address the components of Section 6.0 in NUREG-1569 in the development of their decommissioning plan. The reviewer(s) will use NUREG-1569 for a completeness evaluation of the applicant’s Decommissioning Plan. Further technical review will be required to be completed by knowledgeable staff or subject matter experts.”

Please clarify that NUREG-1569 is applicable only to in-situ recovery facilities and not conventional mills.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: WDEQ made the following change (page 552 of 1147)**

4.2 Decommissioning Plan



The applicant must address the components of Section 6.0 in NUREG-1569, or applicable sections of NUREG-1620 in the development of their decommissioning plan.

**With the change, this comment is considered resolved.**

15. On page 23 of 296, under section 4.2 (c), it states, “The applicant must maintain a financial surety to cover potential restoration costs in the event that monitoring results are contrary to model predictions and groundwater restoration must be initiated.”

Guidance in NUREG-1757, Volume 1, states that based on a review of the Decommissioning Funding Plan, the regulatory authority will determine whether the cost estimate submitted by the licensee adequately reflects all of the costs necessary to carry out all required decommissioning activities prior to license termination and, if the license is being terminated under restricted conditions, to enable an independent third party to assume and carry out responsibilities for any necessary control and maintenance of the site.

The Decommissioning Funding Plan is not be based solely on monitoring results that are contrary to model predictions. The NRC staff recommends that Wyoming clarify all the bases used to develop a Decommissioning Funding Plan.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The language from NUREG 1757 cited above was added to Section 4.2(c) with slight modifications.**

Section 4.2 Decommissioning Plan

(c) Decommissioning Funding Plan

[T]he applicant must maintain a financial surety to cover potential restoration costs in the event that monitoring results are contrary to model predictions and groundwater restoration must be initiated. The applicant must maintain financial surety reflecting all of the costs necessary to carry out all required decommissioning activities prior to license termination and, if the license is being terminated as an UMTRCA Title II site, to enable the State, or the Department of Energy, to assume and carry out responsibilities for any necessary control and maintenance of the site

**After consultation with the NRC, the above changes resolve this comment.**

16. On page 24 of 296, section 4.5 is titled Decommissioning Restricted Use and Alternate Criteria. There does not exist any alternate criteria and all conventional mill sites with tailings are restricted use. A better title to the section is Decommissioning Restricted Use Criteria. Additionally in this section, please include the statement that the NRC should accept the LTSP prior to license termination.

Additionally, it states, "URP staff will review the information supplied by the licensee to determine if the description of the activities undertaken by the licensee is adequate to allow the staff to conclude that the licensee has complied with the applicable requirements of 10 CFR Part 40, Appendix A for those licensees who intend to request termination of their radioactive materials licenses. The basic dose-based requirement for license termination for land areas is Criterion 6 of Appendix A of 10 CFR Part 40. After the URP has determined standards are met, URP will develop the CRR to be sent to the NRC for concurrence. The CRR will be developed in accordance with NRC document NMSS Agreement State Procedure Approval SA-900, "Termination of Uranium Milling Licenses in Agreement States." Once concurrence from the NRC is achieved the license will be terminated. "There is no reference to a LTSP for the tailings impoundments. Please modify the above section to include a reference for a LTSP.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Section 4.5 was re-titled based on the comment (Page 554 of 1147). Additionally, the following language was added in response to the comment:**

Section 4.5 Decommissioning Restricted Use Criteria

[O]nce concurrence from the NRC is achieved, including for Title II sites acceptance of the Long Term Surveillance Plan (LTSP) and the Long Term Care Fee by the NRC, the license will be terminated

**After consultation with NRC, the above changes resolve this comment.**

17. On page 26 of 296, under section 4.7 (b), it states in the first sentence of the second paragraph, "At least one inspection should be conducted while the site is being characterization for major decommissioning efforts that . . ."

Please revise this to say, "At least one inspection should be conducted while the site is being characterized for major decommissioning efforts that . . ."

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Change made as requested (Page 555 of 1147). Comment considered resolved.**

18. On page 26 and 27 of 296, there are references in the procedures to safeguards requirements, safeguard inspections, and criticality safety. Please delete these references. This language is inconsistent with the scope of the Agreement.



**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: References to safeguards requirements, safeguard inspections, and criticality safety have been removed (Page 556 of 1147). Comment resolved.**

19. On page 27 of 296, under section h, please clarify the difference between the “final survey plan” and the “final survey report”. The two terms appear to be used interchangeably. Additionally, it appears section h (2) neglects to discuss the rationale for confirmatory surveys with regard to addressing the decommissioning criteria. Please clarify the use of the terms “final survey plan” and “final survey report” and add the rationale for confirmatory surveys with regard to addressing the decommissioning criteria.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Changes were made to provide clarity. The two terms were changed such that they only references the final status survey (Page 557 of 1147).**

20. On page 28 of 296, in section 4 there is no discussion for the approval of contractors or labs for performing surveys or analyzing samples by the State of Wyoming. The NRC staff recommends that Wyoming provide a discussion for the approval of contractors or labs performing surveys or analyzing samples. Also, the NRC staff recommends that Wyoming indicate that only approved contractors or laboratories will be used for performing surveys or analyzing samples for the State.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The following sentence was added to the end of the paragraph ( Page 558 of 1147):**

"When selecting contractors and laboratories, the URP will select only contractors and laboratories what are able to meet the data quality objective of the Project.

**With the changes this comment is considered resolved.**

21. On page 43 of 296, under section IV (D), it states, “Data from the nearest official weather reporting station(s) may be used. However, if operations are more than 50 miles from an official weather station that is permanently staffed, or orographic effects preclude acceptable extrapolation of data, an on-site meteorological station may be required. For uranium or thorium recovery facilities, the applicant should include any additional meteorological measurement program requirements found in NUREG 1569 Section 2.5.1.”

This statement conflicts with NUREG-1569 and Regulatory Guide (RG) 3.63. NUREG-1569 indicates that data should be obtained from NWS stations within 50 miles of the site and the data can be used only if it is representative of the site. If these conditions are not met, an on-site meteorological station will be needed to gather the data as discussed in RG 3.63. If one year of data is collected on site, the data needs to be representative of long-term conditions as discussed in RG 3.63.

The NRC staff recommends that Wyoming revise the requirement to be consistent with NRC guidance,

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Changes were made based on the comment as follows (Page 573 of 1147):**

Guideline 4 Non Coal Insitu Mining  
Part IV Appendix D; Environmental Baseline Data  
D-4 Climatology

[A]dditionally, for uranium or thorium recovery facilities, if meteorological data is not representative of the site, an onsite meteorological station will be needed to gather the data which must be demonstrated to be representative of long term site meteorological condition

**After consultation with the NRC, with the above changes this comment is considered resolved.**

22. On page 65 of 296, under section VI (Q), it states, "Include a section that summarizes all reporting requirements and include a table that lists all items that are to be reported to LQD. The table should include type of report, content summary, frequency of report, etc."

It appears that the above statement refers to instructions to LQD with regard to reporting requirements to the licensees. The NRC staff recommends that Wyoming replace the statement with the Wyoming reporting requirements with references for the semiannual effluent and monitoring reports that are required by 10 CFR 40.65.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The URP appreciates the recommendation. The 10 CFR 40.65 report will be included in the table the applicant needs to provide to the LQD in the application process. The URP is part of the LQD thus the reports mentioned are included. After consultation with the NRC, this comment is considered resolved.**

23. On page 68 of 296, under section VII (B), it states, "The data should be evaluated



against baseline quality and variability to determine if the restoration goal is met - the primary restoration goal is always baseline. The secondary goal is to restore the water within class of use. The secondary goal of restoration within class of use is applicable for "problem" parameters if and only if BPT has been demonstrated."

NRC staff recognizes the restoration standards in NUREG-1569, Section 6.1.3 (4) is not consistent with 10 CFR Part 40, Appendix A. Regulatory Issue Summary 2009-05, "NRC REGULATORY ISSUE SUMMARY 2009-05 URANIUM RECOVERY POLICY REGARDING: (1) THE PROCESS FOR SCHEDULING LICENSING REVIEWS OF APPLICATIONS FOR NEW URANIUM RECOVERY FACILITIES AND (2) THE RESTORATION OF GROUNDWATER AT LICENSED URANIUM IN SITU RECOVERY FACILITIES," corrected the error to the guidance in NUREG-1569 regarding restoration standards.

The NRC staff recommends that Wyoming revise the above statement such that the restoration standards will reflect the requirements as found in 10 CFR Part 40, Appendix A, Criterion 5.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**DEQ RESPONSE: The URP added the following statement (page 599 of 1147).**

Section VII(B)(7)(c)(iv)

"[F]or uranium or thorium recovery facilities groundwater must also meet criteria listed in 10 C.F.R 40 App A Criterion 5(b)5"

**After consultation with NRC, with the above changes this comment is considered resolved.**

24. On page 215 of 296, under section I, it states, "NUREG 1569 Section 2.2.3(2), 22½-degree sectors centered on the 16 cardinal compass points is not required."

Not including the 16 cardinal points is inconsistent with the guidance in RG 3.63. The NRC staff recommends that Wyoming include the 16 cardinal points.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The above referenced section applies to land use surveys and many of the uranium recovery operators are currently not following this guidance. Most have a LC that states they will extend their annual land use survey 2km in all directions. For meteorological data we will require wind direction in 16 cardinal points. After consultation with NRC this comment is considered resolved.**

25. On page 216 of 296, in the first table of II. Reference, the table includes a statement, "Note on RG 1.86: For the release for unrestricted use of materials and equipment, guidance is included in NUREG-1757, Vol. 1, describing the current NRC staff practice for release of materials and equipment. In addition, RG 8.21, "Health Physics Surveys for Byproduct Material at NRC Licensed Processing and Manufacturing Plants," RG 8.23, "Radiation Safety Surveys at Medical Institutions," and RG 8.30, "Health Physics Surveys in Uranium Recovery Facilities," provide information similar to that included in Table 1 of RG 1.86. Specifically, Table 1 in RG 1.86 is now included in RG 8.23 and is titled, "Table 3 Acceptable Surface Contamination Levels for Uncontrolled Release of Equipment."

The NRC staff notes that current Wyoming NRC licensees are required by license condition to follow the "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material," dated April 1993 (the guidelines). See (ADAMS Accession No. ML003745526). The guidelines should be referenced in the Wyoming Agreement State application since licensees are required to follow this guidance in their licenses.

**Comment stands,** pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Change made as requested. Added language (Page 749 of 1147).**

"Also note that Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for the Byproduct, Source, or Special Nuclear material dated April 1993 may be applicable to applicants"

**With the changes this comment is considered resolved.**

26. On page 238 of 296, in Appendix D-11, it states, "Monitoring Program including frequency, sampling methods, and sampling locations and density are in accordance with Regulatory guide 4.14 Section 1.1. Air monitoring stations are located in a manner consistent with the principal wind directions outlined in Appendix D-4."

Eliminating the cardinal directions discussed in comment 24 will make review of monitoring programs difficult. The NRC staff recommends that Wyoming include the 16 cardinal points.

**Comment stands,** pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Wind Directions will be in 16 cardinal directions as outlined in Appendix D-4 of Guideline 4 and the licensing checklist (Page 771 of 1147). Comment 24 was related to Land Use Surveys and is unrelated. After consultation with NRC, this comment is considered resolved.**



27. On page 271 of 296, under section IV (a), it states, "Please see Appendix C of NUREG-1569 for additional guidance."

Appendix C of NUREG-1569, is for cost estimates. Please verify if this is the correct reference.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The URP reference was correct, but other appendices were added as well (page 805 of 1147). This comment is considered resolved.**

28. On page 274 of 296, under section VI, it states, "For an EIS, the environmental information is reviewed by the EPAD EIS Project Manager."  
This reference is out of date. Please refer to the person in the Wyoming program who will review environmental information.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The URP removed reference to the EIS EPAD. This comment is considered resolved**

29. On page 275 of 296, under section VIII, it states, "For Part 70 licensees, a summary of how the licensee will ensure that the risks addressed in the facility's Integrated Safety Analysis will be addressed during decommissioning."

The NRC staff recommends that Wyoming revise that statement in referring to Part 70 licensees. 10 CFR Part 70 is outside of the scope of the Wyoming Agreement, and Wyoming will not have Part 70 licensees.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: References to Part 70 was removed as requested. This comment is considered resolved.**

30. On page 277 of 296, under section VIII (e), item 2 states, "A statement acknowledging that the dates in the schedule are contingent upon NRC approval of the DP."

Item 3 states, "A statement acknowledging that circumstances can change during decommissioning, and, if the licensee determines that the decommissioning cannot be completed as outlined in the schedule, the licensee will provide an updated schedule to NRC."

Item 4 states, "If the decommissioning is not expected to be completed within the timeframes outlined in NRC regulations, a request for alternative schedule for

completing the decommissioning.”

Please remove references to the NRC and replace with “the State of Wyoming”.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The references to "NRC" have been replaced with "WDEQ" (Page 814 of 1147). This comment is considered resolved.**

31. On page 283 of 296, under section XII (a), it states, “A summary of the volumes of Class A, B, C, and Greater-than-Class-C solid radwaste that will be generated by decommissioning operations.”

Please remove the reference to Greater-than-Class-C waste.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Reference to Greater than Class C waste was removed.(page 820 of 1147) This comment is considered resolved.**

32. On page 284 of 296, under section XII (a), it states, “Please see Appendix C of NUREG-1569 for additional guidance.”

Please verify if Appendix E is the appropriate reference.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The reference to App C was retained considering the context of the sentence relative to the contents of the section, radioactive waste-management. This comment is considered resolved.**

33. On page 284 of 296, under section XII (b), it states, “A summary of the estimated volumes of Class A, B, C, and Greater-than-Class-C liquid radwaste that will be generated by decommissioning operations.”

Please remove the reference to Greater-than-Class-C waste. This type of waste is not included within the scope of the Agreement.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Reference to greater than Class C waste was removed (page 821 of 1147). This comment is considered resolved.**



34. On page 284 of 296, section XII (c) is titled Mixed Waste.

Please delete this section titled Mixed Waste. This waste type is not included within the scope of the Agreement.

**Comment stands, pending review of the revised final application package to verify Wyoming implemented the proposed change.**

**WDEQ RESPONSE: the section was removed as requested (page 821 of 1147). This comment is considered resolved.**

**Appendix A to Subsection 4.7 – Event and Allegation Response Procedural Manual**

General Comment: In your application, you do not specify whether Wyoming’s Department of Environmental Quality has an existing procedure for the handling and disposition of complaints and/or allegations. If WYDEQ has such a procedure, reference(s) to this Department procedure can be used to provide responses and supplement the URP allegation procedure.

35. On page 8 of 61, under section 2.3 (b) (iv), it states, “Evaluate the need for a hazardous chemical consultant. The NRC Operations Center can help contact chemical safety experts at NRC. The EPA may also be contacted for logistical assistance from an EPA On-Site Coordinator. EPA and NRC phone numbers may be found in Section 4 of this manual.”

Please remove references to the NRC in the paragraph and insert the appropriate State information

**Comment stands, pending review of the revised final application package to verify Wyoming implemented the proposed change.**

**WDEQ RESPONSE: References to NRC were removed from this section (page 1064 of 1147). This comment is considered resolved.**

36. On page 10 of 61, under section 2.8 (a) (ii), it states, “Availability of radiation monitoring resources near scene of incident (State Radiological Health Dept., DOE Radiological Assessment teams, NRC regional offices, licensee’s qualified staff, hospital, or university with radiation protection technicians).”

Please verify that the State Radiological Health Department is the correct Wyoming Agency referenced in the sentence. If not, please correct.

**Comment stands, pending review of the revised final application package to verify Wyoming implemented the proposed change.**

**WDEQ RESPONSE: Reference to State Radiological Health Dept. was replaced with Wyoming URP (page 1066 of 1147). This comment is considered resolved.**

37. On page 13 of 61, under section 2.14 (b), it states, “If additional assistance is needed, NRC staff can call the Radiation Emergency Assistance Center/Training Site (REAC/TS) at 865-576-1005.”

Please remove this sentence indicating the NRC staff will contact the Radiation Emergency Assistance Center, and replace with a statement indicating that Wyoming staff will contact REAC/TS.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Change made as requested (page 1069 of 1147). This comment is considered resolved.**

38. On page 17 of 61, under section 3.6 in the second paragraph, it states, “If the request for no contact is made in writing, or it is not clear that the URP employee receiving the verbal contact has explained the advantages of the alleged’s continued involvement in the allegation process, then the responsible branch URP staff member will attempt an additional contact with the alleged.”

Wyoming does not state it would attempt to make an additional contact to inform an alleged that the State is considering sending a Request For Information (RFI) to the licensee after the alleged requested no further contact with the State.

Under section 3.12 (f) (iv), Wyoming states that a reasonable effort will be made to contact an alleged before issuing an RFI letter. It is not clear the State will attempt to make an additional contact the alleged when the alleged asked not to be contacted further under section 3.6.

For comparison, in the Handbook of Management Directive 8.8, “Management of Allegations”, in section II (B) (6) (c) (ii), it states that the NRC will attempt an additional contact to inform the alleged, that had requested no further contact before sending the RFI, to see if the alleged had any objections to issuing the RFI. Please clarify and align the two statements in sections 3.6 and 3.12.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

39. On page 18 of 61, under section 3.8 in the fourth paragraph, it states, “For an alleged who has been granted confidential source status, identity protection is also referred to as confidentiality. See Attachment C, “Glossary,” of this manual for definitions of “identity protection”, “confidentiality”, and “confidential source”.”

Wyoming procedures lack a reference to a section discussing the granting and revoking of confidential source status. The Wyoming allegation procedures should include a section discussing how confidential source status will be granted and revoked, that can be referenced in the fourth paragraph of section 3.8. The procedures for explaining how granting and revoking confidential status will occur are needed to fulfill the essential element in NMSS Agreement State Procedure Approval SA-700, “Handbook for Processing an Agreement”, section 4.7.1.2, titled



## Evaluation Criteria.

The procedures should also provide for protection of the identity of a person making an allegation when requested. (See the Handbook of Management Directive 8.8, "Management of Allegations", section II (F) (3) (b) and section IV for further information on granting and revoking confidential source status.)

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The manual was changed such that the URP will grant confidentiality by not recording an alleger's name or contact information. When taking an allegation the URP staff is to explicitly ask if the alleger wishes to remain anonymous. There will be no revoking of confidential status. Granting confidential status will be by remaining anonymous. After consultation with NRC the new information should resolve the concerns addressed above.**

40. On page 18 of 61, under section 3.8 in the tenth paragraph, it states, "Approval of the applicable regional administrator or headquarters office director is required if the licensee is to be informed that the inspection activity is related to an allegation." The paragraph also states "The licensee is notified when it is deemed necessary during the conduct of an inspection requested by a worker in accordance with 10 CFR Part 19.16(a)."

Please replace references to the regional administrator or headquarters office director with the equivalent Wyoming staff. Please also replace references to the Code of Federal Regulations with the equivalent Wyoming regulation.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The change was made as requested (page 1073 of 1147). This comment is considered resolved.**

41. On page 19 of 61, under section 3.9, please include more detailed information in the procedure on who would make a decision in "upper management" to release an alleger's identity who wanted confidentiality, how the alleger would be notified and how the alleger would be advised about confidential source status. (See the Handbook of Management Directive 8.8, "Management of Allegations", sections II (F) (12) (c) and II (F) (13) for further information.)

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: If the alleger wishes to remain confidential the URP will not record or remove contact information and inform the alleger that the**

**allegation will be treated as an anonymous tip. Allegations will be released only after public records requests have come in and after the attorney general's office has approved the release. After consultation with the NRC, this comment should be resolved.**

42. On page 19 of 61, under section 3.10, the procedures should provide more information about how URP will work with the Department of Labor regarding allegations involving discrimination in order to meet the essential objectives in NMSS Agreement State Procedure Approval SA-700, "Handbook for Processing an Agreement", section 4.7.1.2, titled Evaluation Criteria, to address allegation response, follow-up, closeout, provide for protection of the identity of a person making an allegation, and protection of other sensitive information. Section 3.10 can reference other relevant state procedures or provide more information in the URP procedures similar to the level of detail in the Handbook of Management Directive 8.8, "Management of Allegations", section III (A).

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Based on the comment above language was added from Management Directive 8.8 as follows (page 1075 of 1147).**

#### 3.10 Allegations Involving Discrimination

For allegations involving discrimination, the URP will work with the Department of Labor on a case by case basis. These requests may involve technical issues associated with protected activity, the organizational structure of employers, or WDEQ requirements. WDEQ is available to assist DOL personnel and individuals with accessing WDEQ information, understanding technical issues, or determining whether an individual is engaged in protected activity. The URP Program Manager is the WDEQ contact if DOL is requesting information about a specific allegation. If this contact occurs, staff should respond promptly because DOL investigators have a short statutory time frame within which to complete their investigation.

**With the new information, this comment is considered resolved.**

43. On page 20 of 61, under section 3.11, the procedures should provide additional information on how allegations will be processed after they are referred to upper management. This information should include the title of the upper management personnel making these decisions. Wyoming can reference other State procedures, or develop further information in the URP procedures using the Handbook of Management Directive 8.8, "Management of Allegations", sections II (H), II (I), and II (J) or another Agreement State procedures as guidance.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.



**WDEQ RESPONSE: Changes were made to the manual such that management will be briefed on the allegation. Within the URP program management consists of the URP Program Manager. The Program Manager will decide if it is brought to other management within the Department of Environmental Quality. This comment is considered resolved.**

44. On page 21 of 61, under section 3.11 (c), there should be a requirement in this section stating that the information concerning the identity of the alleged, and any information that the NRC will classify as sensitive unclassified non-safeguards or safeguards information must be stored in an approved storage container. Please identify the location of the approved storage container. (See the Handbook of Management Directive 8.8, "Management of Allegations", section II (H) (4) for guidance).

**Comment resolved.**

45. On page 23 of 61, under section 3.12 (f) (v), bullet 5 states, "The licensee is also expected to note any violation of URP requirements identified during the course of the review."

Please revise the paragraph to state, "The licensee is expected to note any instance identified during the course of its review in response to a request for information letter indicating that an URP requirement may have been violated." The URP has to determine whether a violation of a URP requirement occurred, not the licensee.

**Comment stands, pending review of the revised final application package to verify Wyoming implemented the proposed change.**

**WDEQ RESPONSE: Change made as requested (page 1079 of 1147). This comment is considered resolved.**

46. On page 25 of 61, under section 3.12, the NRC staff recommends that Wyoming provide a standardized request for information letter that can be referenced in this procedure. (Exhibit 14 in NRC Allegation Manual provides a sample request for information letter to a licensee.)

**Comment stands, pending review of the revised final application package to verify Wyoming implemented the proposed change.**

On page 25 of 61, under section 3.12 (g) (ii), it states, "If, after the URP is described to an individual who contacts NRC with concerns about an URP licensee, the concerned individual agrees to contact and be contacted directly by the URP, the concerns are provided to the appropriate Regional State Agreements Officer (RSAO) for referral to the URP and are not processed as allegations."

Please delete the phrase "and are not processed as allegations". The phrase refers to the NRC's practice of tracking Agreement State performance concerns and is not

relevant to the Wyoming procedures.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The WDEQ added the following language to Section 3.12 (page 1079 of 1147):**

Section 3.12 Allegation Evaluation

[P]lease refer to Exhibit 14 in NRC allegation Manual for guidance in drafting a letter.

**After consultation with NRC and with the changes above, this comment is considered to be resolved.**

- 48 On page 25 of 61, under section 3.12 (g) (iii), it states, “If the concerned individual is unwilling to contact or to have his or her identity disclosed to the URP, the allegation program is used to track the evaluation of the concerns raised about the URP license.”

Please remove this paragraph. It refers to the NRC practice of tracking Agreement State Performance Concerns and is not relevant to the Wyoming procedures.

**Comment stands**, Wyoming needs to address this comment.

**WDEQ RESPONSE: WDEQ made the requested change (page 1080 of 1147). This comment is considered resolved.**

49. On page 25 of 61, under section 3.12 (i), the paragraph appears to discuss the referral of allegations or concerns to other Agreement States. If that is the intent of the paragraph, please revise to clearly specify the process that will be followed. If that is not the intent of the paragraph, please include a section in the procedures that clearly states the process for referring allegations and performance concerns to other Agreement States.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The change was made as requested (page 1080 of 1147). This comment is considered resolved.**

50. On page 26 of 61, under section 3.14, this section should include further information including: 1) having a sample closure letter in the procedure; and 2) providing more information on how the staff will handle closures involving enforcement matters. (Exhibits 18 and 20 of the NRC Allegation Manual provides sample closure letters, and the Handbook of Management Directive 8.8, “Management of Allegations”,



section II (L) (4) provides further information on handling the closure of allegations related to enforcement matters.)

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Language was added to section 3.14 (page 1082 of 1147)**

For guidance in drafting the letter please refer to NRC allegation Manual Exhibit 18 and 20.

**After consultation with NRC and the above changes, this comment is considered resolved.**

51. On page 29 of 61, under section 3.17, it states, “Ideally, all allegations concerning a particular licensing or certification matter will be satisfactorily resolved by the applicant before any license or certificate is issued.”

Please revise the first sentence in the paragraph to state, “Ideally, all allegations concerning a particular licensing, certification or operational matter will be satisfactorily resolved by the applicant before any license or certificate is issued or any operational decision is made.” This change is necessary to state that allegations also cover the licensee’s operational activities that may not be involved with issuance of a license or certification. (For guidance see the Handbook of Management Directive 8.8, “Management of Allegations”, sections II (P) (1-3).)

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The change was made as requested (page 1084 of 1147). This comment is considered resolved.**

52. On page 32 of 61, in Attachment A, at the top of the page remove the phrase, “NRC Review By.”

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The change was made as requested (page 1087 of 1147). This comment is considered resolved.**

53. On page 33 of 61, the Allegation Report Form is incorrectly labeled as Appendix B when it should be labeled as Attachment B.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The change was made as requested (page 1087 of 1147). This comment is considered resolved**

54. On page 36 of 61, in Attachment C under the Glossary, please revise the definition of the term “Allegation” to remove references to NRC regulatory provisions and NRC employees or NRC contractors. Replace these references with the appropriate Wyoming Program information.

**Comment stands,** pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The change was made as requested (page 1090 of 1147). This comment is considered resolved.**

55. On page 36 of 61, in Attachment C under the Glossary. Recommend defining the following words using Wyoming equivalent terms for: “Allegation File,” “Allegation Guidance Memorandum,” “Allegation Management System” and “Allegation Manual”.

**Comment stands.** Wyoming is considering the comment.

**WDEQ RESPONSE: Wyoming made the following changes based on this recommendation (page 1091 of 1147). The definitions for Allegation file and Allegation Management System were added. As this was just a recommendation this comment is considered closed.**

56. On page 36 of 61, in Attachment C under the Glossary. Please revise the definition of “Alleger” to state, “An individual who or an organization that submits an allegation to URP or NRC or that provides information in a public forum that is recognized as an allegation. Anonymous concerns are accepted.”

**Comment stands,** pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Change was made as requested (page 1091 of 1147). This comment is considered resolved.**

57. On page 36 of 61, in Attachment C under the Glossary. Recommend providing a model confidentiality agreement as an attachment to Subsection 4.7 Appendix A. Wyoming can use other Wyoming agencies’, other Agreement States’ or the NRC’s model confidentiality statements to develop their model. (Exhibit 5 of the NRC Allegation Manual provides a sample Confidentiality Agreement.)

**Comment stands,** pending review of the revised final application package to verify Wyoming implemented the proposed change.



**WDEQ RESPONSE: Removed reference to confidentiality agreements. DEQ maintains confidentiality by not taking contact information. After consultation with the NRC and the changes listed, this comment is considered resolved.**

58. On page 36 of 61, in Attachment C under the Glossary. Recommend defining the following words using Wyoming equivalent terms for: “Discrimination,” “Licensee,” “Referral,” and “Staff.”

**Comment stands.** Wyoming is considering the comment

**WDEQ RESPONSE: Based on the recommendation the WDEQ added the requested definitions (page 1091 of 1147). This comment is considered closed.**

59. On page 36 of 61, in Attachment C under the Glossary. Please revise the definition of “Emergency Incident” to indicate it requires activation of the Wyoming response program instead of the NRC’s Incident Response Program.

**Comment stands,** pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The change was made as requested (page 1091 of 1147). This comment is considered resolved.**

60. On page 38 of 61, in Attachment C under the Glossary, the definition of inspection states, “A special activity usually conducted by regional office and/or headquarters office staff, and used to evaluate an allegation.”

Please revise the definition to state, “For the purposes of this procedure, an evaluation conducted by the Wyoming staff and used to evaluate an allegation.” The revision removes the reference to the NRC and clarifies the inspections are related to an allegation.

**Comment stands,** pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: The change was made as requested (1092 of 1147). This comment is considered resolved.**

61. On page 38 of 61, Attachment C under the definition of Protected Activity, discusses NRC activities. Wyoming should revise the definition to identify what Wyoming activities apply to this definition.

**Comment stands,** pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Changes were made to the definition as requested ( page 1092 of 1147). This comment is considered resolved.**

## **Section II.B. Additional Comments on the Draft Application**

The following section directly quotes the comment that was included in the December 7, 2017 email to Wyoming using the same heading and comment number. The current status for the comment is noted in bold.

#### **Additional Comments on previous draft Application**

1. On pages 928 and 955 of 1080, the staff notes that in the previous Wyoming Agreement State submission, the Wyoming Uranium Recovery Inspector Qualification Journal, Qualification Guide 4, references "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Byproduct, Source, and Special Nuclear Material Licensees," dated November 1983. The NRC has updated this guidance with, "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material," dated April 1993. See (ADAMS Accession No. ML003745526).

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Please ensure this and other references are up to date.

**Comment stands**, pending review of the revised final application package to verify Wyoming implemented the proposed change.

**WDEQ RESPONSE: Changes were made as requested. The comment is considered resolved.**

The following section are additional comments with regard the regulations that were incorporated by reference to NRC regulations. Additionally, there are comments related to reciprocity and general licensing. These comments do not need to be addressed prior to the transfer of the Agreement. These comments can be addressed by WYDEQ after the transfer of the Agreement. These comments are administrative in nature and have no impact on public health and safety.

#### **Additional Comments on Wyoming Uranium Recovery Rules**

General comment: Wyoming Uranium Recovery Program Rules, Chapter 4, Section 5, includes regulatory provisions that provide a Wyoming address where parties should file license applications. NRC staff recommends that Wyoming provide addresses where the public and licensees should send information required in other regulations incorporated by reference.



NRC staff have the following comments with regard to typos and errors and recommends making the following revisions the next time the State of Wyoming opens the regulations for revision.

**1. Wyoming Uranium Recovery Program Rules Chapter 3—Radiation Protection Standard**

- a. Section 4 (b)—Add “20.2004(a)(1), 20.2004(a)(2) and 20.2004(b)” to the list of provisions not incorporated by reference. None of these provisions in 10 CFR § 20.2004 pertain to Wyoming’s limited authority under their proposed Agreement.
- b. Section 4 (b)—Add “20.2206” and delete “20.2206(a)(1), 20.2206(a)(3), 20.2206(a)(4), 20.2206(a)(5)” from the list of provisions not incorporated by reference. None of the provisions in 10 CFR § 20.2206 pertain to Wyoming’s limited authority under their proposed Agreement.
- c. Section 4(b)—Add 10 CFR §20.2203(c) to the list of provisions not incorporated by reference. This provision references commercial nuclear power plants under 10 CFR Parts 50 and 52 and does not pertain to Wyoming’s limited authority under their proposed Agreement.
- d. Section 4(c) - Clarify whether the reference in Section 3(c) to the “NRC Operations Center” also covers “the NRC Document Control Desk” referenced in 10 CFR § 20.2203(d).

**WDEQ RESPONSE:** The WDEQ is appreciative of the recommendation and will consider this at the next available opportunity to change the rules. It is important to note that NRC had multiple opportunities to comment on the regulations and these comments were never brought up. The initial 10 CFR 20 regulations were first submitted to NRC on January 11, 2016. Additionally, 10 C.F.R 20.2203(c) is already a provision not incorporated under the current Chapter.

**2. Wyoming Uranium Recovery Program Rules Chapter 4—Licensing Requirements for Source and Byproduct Material**

- a. Section 3 (b)—Change “Section III Site and Byproduct Material Ownership, Criterion 9(h)(4)” to “Section II Financial Criteria, Criterion 9(i)(4).”
- b. Section 3 (b)—Add 10 CFR §§40.54 and 40.55 to the list of 10 CFR Part 40 provisions not incorporated by reference because general licenses will not be issued by WYDEQ

- c. Chapter 4, Section 3(c)—Delete references to 10 CFR §150.20 from Section 3(c). 10 CFR §150.20 should not be incorporated by reference. Since Wyoming anticipates the State will rarely receive any requests for reciprocity, Wyoming can provide information on their web site and procedures describing how other Agreement States and NRC licensees can obtain permission to conduct activities under Wyoming’s regulatory authority.
- d. Section 3—Add the following provision to clarify when the “NRC or Commission” means the “Department and Uranium Recovery Program” in the regulatory provisions incorporated by reference in Chapter 4.

Any reference in the federal rules adopted by reference to the U.S. Nuclear Regulatory Commission (NRC), or any component thereof, shall be deemed to be a reference to the Department and the Uranium Recovery Program, except when used in 10 CFR §§ 40.2a, 40.51(b)(2), and 150.31.

Section 3—Add the following provision in Chapter 4 (and any relevant Chapters) to clarify that “Commission or an Agreement State” or “Commission or the licensing agency of an Agreement State” also means “Wyoming, NRC, and other Agreement States” in the following regulatory provisions incorporated by reference.

A reference to “Commission or an Agreement State” or “Commission or the licensing agency of an Agreement State” means “Department, NRC, or Agreement State” in 10 CFR Parts 40.51(b)(5), 40.51(c), 40.51(d)(4), 40.51(d)(5).

**WDEQ RESPONSE: The WDEQ is appreciative of the recommendation and will consider this at the next available opportunity to change the rules.**

### **3. Wyoming Uranium Recovery Program Rules Chapter 5—Notices, Instructions, and Reports to Workers**

- a. Section 3 (b)—Add 10 CFR §19.4 to the list of provisions not incorporated by reference.

**WDEQ RESPONSE: The WDEQ is appreciative of the recommendation and will consider this at the next available opportunity to change the rules.**

### **4. Wyoming Uranium Recovery Program Rules Chapter 9—Transportation**



- a. Chapter 9 Section 3(b)—Add 10 CFR §71.17 to the list of provisions not incorporated by reference. Wyoming does not have authority to regulate any 11e.(1) byproduct material under the proposed limited Agreement.
- b. Chapter 9, Section 3(d)—Add 10 CFR §71.93 to the list of provisions not incorporated by reference. Wyoming does not have authority to regulate these activities under the proposed limited Agreement.

**WDEQ RESPONSE:** The WDEQ is appreciative of the recommendations and will consider this at the next available rule making opportunity. WDEQ agrees that the above references and that the use of Type B packages is not used at Uranium Recovery Operations. The WDEQ originally had proposed regulation that excluded the two provisions listed above along with multiple other provisions that dealt with Type B packages and it was determined by NRC that there were compatibility concerns with not having those in regulations. In the future WDEQ will examine whether to exclude the above references along with other provisions that deal with Type B packages.