



**Vermont Department of Health
Draft Request for
US Nuclear Regulatory Commission
Agreement State Status**

Date Submitted: 09/15/2017

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1.0 Preface

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**Formal Request for an Agreement
State of Vermont**

1.0 Preface

This document is prepared as the submittal for the State of Vermont's request to become an Agreement State as authorized by the Atomic Energy Act (AEA) of 1954, as amended. This Agreement will provide for the State of Vermont's assumption of regulatory authority over radioactive materials not involved in energy production used in the State of Vermont from the United States Nuclear Regulatory Commission (NRC).

2.0 Introduction

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2.0 Introduction

On July 6, 2015, Governor Peter Shumlin sent NRC Chairman Stephen G. Burns a letter of intent for Vermont to enter into an Agreement with the NRC. Since that time, the Radiation Control Program has worked to revise its enabling legislation and regulations for purposes of entering into an Agreement, trained and qualified staff for licensing and inspection responsibilities to be assumed under the Agreement, and developed this Request with the procedures, forms, and other content to meet the criteria and information needs in the NRC's Handbook for Processing an Agreement. References to the content are provided throughout this request. Key documents are available here in their entirety:

- Act No. 82 (2016), the enabling legislation:

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT082/ACT082%0As%20Enacted.pdf>

- The Radiological Health Rule (regulations):

http://www.healthvermont.gov/sites/default/files/documents/2016/12/REG_radiological-health.pdf

How to navigate the document

This Application is of substantial length. The electronic version was created so the user may move within it to find documents more easily. In addition to using the search feature for key words, the reader can use the active Table of Contents to navigate between the Table of Contents and Sections and Subsections of the Application. Moving from the Table of Contents to Sections and Subsections is done with a control/click sequence. The control/click sends you to an electronic divider. The content sought follows the electronic divider. Moving back to the Table of Contents is done from the electronic dividers, by clicking the **Top of Page** links.

Commented [JS4]: In the Introduction section, VT should clarify that the appropriate authorities have been delegated as necessary for the program to fulfill its functions as an Agreement State agency.

Commented [JS5]: In this section, VT should also clarify that while certain statutes reference local boards of health or selectboards, these bodies have no involvement in the state's radiation control program.

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3.0 Overview

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3.0 Overview

This document is prepared using the guidance in the NRC Office of Nuclear Material Safety and Safeguards *Handbook for Processing an Agreement* dated January 26, 2015. The Information Needed and Evaluation Criteria specified in Section 4.0 of the Handbook are addressed herein to ensure that the State of Vermont has a compliant and compatible program for the control of licensees who possess, use, store, transfer, and dispose of radioactive materials in the state of Vermont.

The State of Vermont seeks to enter into an Agreement with the NRC assuming regulatory authority over byproduct materials, source materials, and special nuclear materials in quantities not sufficient to form a critical mass. In addition, the State seeks to regain regulatory authority over those materials transferred to the NRC by the Energy Policy Act of 2005. The following information is provided in support of this application to become an Agreement State.

4.0 Information Needed and Evaluation Criteria

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4.0 Information Needed and Evaluation Criteria

This section addresses the information that the NRC requires, to review an Agreement request and the evaluation criteria that NRC staff will use as a baseline. This is based on *Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement*, known as the Criteria Policy Statement, and described in Section 4.0 of the *Handbook for Processing an Agreement*. The handbook criteria are in bold, and the content to meet the criteria follow.

4.1 Legal Elements

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4.1 Legal Elements

In this section is found the information needed to meet the evaluation criteria in the *Handbook for Processing an Agreement* Subsections:

- 4.1.1 Authority to Establish a Program and Enter into an Agreement
- 4.1.2 Organization of the Proposed Program; and
- 4.1.3 Content of the Proposed Agreement.

The handbook criteria are in bold, and the content to meet the criteria follow.

4.1.1 ***Authority to Establish a Program and Enter
into an Agreement.***

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4.1.1 Authority to Establish a Program and Enter into an Agreement.

4.1.1.1 Information Needed

For all categories of materials for which the State is requesting authority, the State should submit State law that:

4.1.1.1.a. Establishes the Agreement materials program, defines its structure, and authorizes the Governor to enter into an Agreement with the Commission.

The Vermont Department of Health's (hereinafter "the Department") statutory authority to establish the Agreement State program and define its structure is provided in the Vermont Statutes Title 18 Health, Chapter 32: Ionizing and Nonionizing Radiation Control (cited as 18 V.S.A. §§ 1651-1657). The law authorizes the Governor to enter into an Agreement with the Nuclear Regulatory Commission:

"The Governor, on behalf of the State of Vermont, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to by-product, source, and special nuclear materials and the assumption of these responsibilities by the State of Vermont." 18 VSA § 1653(a).

The structure of the Agreement Materials Program is provided below in Section 4.1.2.

4.1.1.1.b. Authorizes the program to issue licenses, including the following:

4.1.1.1.b.1. Authorizes the program to impose additional license requirements;

18 VSA § 1653(b)(2)(A) provides such authority by specifically stating "the Department shall have authority to "impose conditions that are individual to a license when necessary to protect public health and safety."

Commented [IW7]: NRC Comment 1

4.1.1.1.b.2. Authorizes the program to give exemptions from licensing requirements;

18 VSA §1653(b)(2)(D) authorizes the program to:

"[E]xempt certain by-product, source, or special nuclear materials of kinds of uses; or users from the licensing or registration requirements set forth in this section when the Department makes a finding that the exemption of such materials of kinds of uses; or users will not constitute a significant risk to the health and safety of the public."

4.1.1.1.b.3. Authorizes the program to recognize the licenses of other jurisdictions (that is reciprocity);

18 VSA §1653(b)(2)(B) authorizes the program to "reciprocate in the recognition of specific licenses issued by the NRC or another state that has reached an agreement with the NRC pursuant to 42 U.S.C. § 2021(b)(agreement state)."

4.1.1.1.b.4. Makes it unlawful to acquire, possess, store, use, transfer, or dispose of materials without a valid license, or to violate the conditions of a license;

18 VSA §1653(b)(7)(A) states:

“A person shall not use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any by-product, source, or special nuclear materials unless licensed by or registered with the Department in accordance with the provisions of this chapter or rules adopted under this chapter.”

4.1.1.1.b.5. Authorizes the program to recognize licenses transferred from the NRC under the Agreement as State licenses.

18 VSA §1653(b)(5) states:

“Any person having a license immediately before the effective date of an agreement under subsection (a) of this section from the federal government or agreement state relating to by-product material, source material, or special nuclear material and which on the effective date of this agreement is subject to the control of this State shall be considered to have a like license with the State of Vermont until the expiration date specified in the license from the federal government or agreement state or until the expiration date specified in the license from the federal government or agreement state or until the end of the 90th day after the person receives notice from the Department that the license will be considered expired.”

This section ~~is not intended to~~ does not affect NRC or Agreement State licensees based outside of Vermont. ~~It is~~ The State of Vermont understands that ~~understood~~ if and when an Agreement between the NRC and Vermont goes into effect, the state will assume regulatory authority for those NRC licensees based in Vermont. Any licensees from other Agreement States or NRC licensees not based in Vermont that are operating in Vermont on the effective date of an Agreement would be subject to reciprocity under Vermont’s statutes and regulations. ~~the agreement is limited between the NRC and the signatory agreement state.~~

4.1.1.1.c Authorizes the program to adopt regulations.

4.1.1.1.c.1. Specifies the procedures and requirements for adoption of regulations, including public participation.

The Department may adopt, amend, and repeal rules under Vermont’s Administrative Procedures Act (APA). *See* 18 V.S.A. § 1652(c) referencing the APA. 18 VSA §1652(c) states that:

“The Department may adopt, amend, and repeal rules under 3 V.S.A. chapter 25 that may provide for licensing and registration for the control of sources of ionizing radiation and that may provide for the control and regulation of sources of ionizing and nonionizing radiation.”

More specifically, 18 VSA §1653(b)(1) provides:

Commented [IW8]: NRC Comment 3.

Commented [CT9]: See revisions

Commented [IW10]: NRC Comment 5.

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Commented [IW11]: NRC Comment 5.

The Department shall provide by rule for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. The rule shall provide for amendment, suspension, or revocation of licenses. A rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC except as the Commissioner determines is necessary to protect public health.

Commented [IW12]: NRC Comment 6.

Commented [IW13]: NRC Comment 2.

The rule will be promulgated in accordance with Vermont's APA as provided in 3 V.S.A. §§ 836-848.

Commented [IW14]: NRC Comment 4.

In addition, the Vermont APA sets forth requirements for rulemaking and public participation. (<http://legislature.vermont.gov/statutes/chapter/03/025>). 3 VSA § 840 states:

(a) The agency may hold one or more public hearings for each proposed rule. A public hearing shall be scheduled if so requested by 25 persons, by a governmental subdivision or agency, by the Interagency Committee on Administrative Rules, or by an association having 25 or more members. The first hearing shall not be held sooner than 30 days following the notice required by section 839 of this title.

(b) On request, the agency shall promptly provide a copy of a proposed or final proposed rule. If the copy is mailed, it shall be sent not later than the end of the third working day after the request is received. The agency may charge for copying costs in the amount provided by law.

(c) An agency shall afford all persons reasonable opportunity to submit data, views, or arguments, orally or in writing, at least through the seventh day following the last public hearing.

(d) The agency shall consider fully all written and oral submissions concerning the proposed rule, and all submissions on separate requirements for small businesses. The agency shall provide information to all individuals, who submitted written or oral comment, on the procedure for adoption of rules and how to obtain changes in the proposed rule.

(e) If requested by an interested person at any time before 30 days after final adoption of a rule, the adopting authority shall issue an explanation of the proposed rule. The explanation shall include:

(1) a concise statement of the principal reasons for and against the adoption of the rule in its final form; and

(2) an explanation of why the adopting authority overruled the arguments and considerations against the rule.

4.1.1.1.c.2. Allows the program to impose requirements in the form of other generic legally binding requirements, such as license conditions or orders.

The Department has the authority to enforce all the provisions of Title 18, or the rules, permits, or orders issued pursuant to the title. 18 V.S.A. § 130. The Department can issue health orders

and, in lieu of instituting an action or proceeding against a person, may enter into an assurance of discontinuance with the party which is filed with the Superior Court and becomes an order of the court. *See* 18 V.S.A. §§ 125 and 126. 18 VSA § 125 provides for an Assurance of Discontinuance. This provision allows the Department to enter into a legally binding agreement with specific requirements or conditions. The Department's Radiological Health Rule provides for amendment, suspension, or revocation of licenses. ~~18 V.S.A. § 1653(b)(1).~~ *See* section 10 of the Radiological Health Rule: 18 V.S.A. § 1653(b)(1) (directing the Department to provide by rule for the "amendment, suspension, or revocation of licenses").

Commented [IW15]: NRC Comment 8.

Commented [IW16]: NRC Comment 7.

4.1.1.1.d Authorizes representatives of the program to enter premises and conduct inspections.

18 VSA § 1654 authorizes representatives of the program to enter premises and to conduct inspections:

“The Department or its duly authorized representatives may enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of this chapter and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be made only with the concurrence of the federal government or its duly designated representative.”

4.1.1.1.e Authorizes the program to require compliance with regulatory requirements by both licensees and unlicensed individuals.

18 VSA §1653(b)(2)(C) provides for this by stating the Department shall have authority to “require that licensees and unlicensed individuals comply with the federal statutes and regulations relating to the authority assumed by the Department under this section and with the rules adopted by the Department under this section.”

4.1.1.1.f Authorizes the program to impose sanctions for violations of the regulations, orders, or license conditions.

The Department has the authority to enforce all the provisions of Title 18, or the rules, permits, or orders issued pursuant to the title. 18 V.S.A. § 130. The Department can issue health orders and, in lieu of instituting an action or proceeding against a person, may enter into an assurance of discontinuance with the party which is filed with the Superior Court and becomes an order of the court. *See* 18 V.S.A. §§ 125 and 126.

The Department's Radiological Health Rule provides for amendment, suspension, or revocation of licenses. ~~18 V.S.A. § 1653(b)(1).~~ *See* section 10 of the Radiological Health Rule: 18 V.S.A. § 1653(b)(1) (directing the Department to provide by rule for the "amendment, suspension, or revocation of licenses"). In addition, section 10.1.1 of the Radiological Health Rule permits the Department to impose sanctions for violation of the regulations:

Whenever the Department has reasonable grounds to believe that there has been a violation of any of the provisions of this rule, the Department may take appropriate action as provided in this subsection or otherwise provided in law at 18 V.S.A. Ch. 32, to protect the public health and safety.

In turn, § 1657 of 18 V.S.A. Ch. 32 provides for fines and criminal penalties for those in violations of the rules under Ch. 32:

Any person who violates this chapter or rules in effect pursuant thereto shall, upon conviction thereof, be imprisoned not more than six months or fined not more than \$500.00 or less than \$100.00, or be both imprisoned and fined. 18 V.S.A. § 1657.

18 VSA § 1653(b)(2)(A) provides that:

“The Department shall have authority to “impose conditions that are individual to a license when necessary to protect public health and safety.”

18 VSA §1653(b)(7)(B) authorizes the Department to impound certain material in the event of an emergency: to impose sanctions for violations of the regulations, orders, or license conditions:

“The Department shall have the authority in the event of an emergency to impound or order the impounding of by-product, source, and special nuclear materials in the possession of any person who is not equipped to observe the provisions of this chapter or any rules adopted under this chapter.”

In 18 VSA § 1655(a) and (b), further provisions exist to impose sanctions for violations of regulations, orders, or license conditions:

(a) In any proceeding under this chapter for the issuance or modification of rules relating to control of by-products, source, and special nuclear materials; or for granting, suspending, revoking, or amending any license; or for determining compliance with or granting exemptions from rules and regulations of the Department, the Department shall hold a public hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to the proceeding, subject to the emergency provisions in subsection (b) of this section.

(b) “Whenever the Department finds that an emergency exists requiring immediate action to protect the public health and safety, the Department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as necessary to meet it. Notwithstanding any contrary provision of this chapter, the order shall be effective immediately. Any person to whom the order is directed shall comply with the order immediately, but on application to the Department shall be afforded a hearing within ten days. Based on the basis of the hearing, the emergency order shall be continued, modified, or revoked within ten days after the hearing.”

Further, the Department can cause the Attorney General’s office shall, at the request of the Department, to seek injunctive relief, 18 VSA § 1656:

Commented [IW17]: NRC Comment 9.

Commented [JS18]: This statute only applies in an emergency

Commented [JS19]: In our previous comments, the NRC stated that “18 VSA § 1655(a) and (b) do not allow the program to impose sanctions for violations. Those sections relate to hearings and judicial review. Paragraph (a) is related to the rulemaking proceedings for the program; paragraph (b) relates to immediate actions to protect public health and safety and could, in certain limited circumstances, apply to violations.”

We recommend that VT either (1) remove these citations entirely since they do not allow the program to impose sanctions for violations, or (2) significantly revise their description of these sections to make clear that 1655(a) refers to public hearing rights, and 1655(b) relates only to immediate action to protect public health and safety.

Commented [IW20]: NRC Comment 10.

“Whenever, in the judgement of the Department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule issued thereunder, the Attorney General shall make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the Department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.”²²

4.1.1.1.g Establishes conflict of interest and ethics regulations or procedures applicable to those portions of the State Radiation Control Program covered by the Agreement.

Appointed officials for the State of Vermont are governed by an executive code of ethics that applies to all executive branch appointees. In addition, all state employees must comply with personnel policies regarding conflicts of interest and employee conduct that when read together are equivalent to the executive code of ethics.

From the Vermont Statutes comes 3 App. VSA ch. 3 § 53 incorporates Executive Order No. 3-53, *Executive Code of Ethics* into the statute and describes how the conduct of public officers must be independent and impartial, and not be impaired by conflicts of private and public interests. The explicit rules of general conduct, and specific ethics that apply rules while in state employment and after state employment, extend specifically apply to the appointees of the Governor, which includes the Deputy Commissioner for Public Health, the Commissioner of Health, and the Deputy Secretary and Secretary of the Agency of Human Services. The Radioactive Materials Agreement State Program exists in lines of authority from these appointees as seen in Figures 1 through 5 below. This statute (3 App. VSA chapter 3 § 53) may be accessed here: <http://legislature.vermont.gov/statutes/section/03APPENDIX/003/00053>.

For the employees under these appointees, there are two primary Vermont Human Resources Department procedures. Procedure 5.2, *Conflicts of Interest Arising from Employment*, applies to all State of Vermont employees, and relates primarily to rules and procedures to prevent conflicts of interest or the appearance of a conflict of interest between State employees and their relatives. It may be accessed here:

http://humanresources.vermont.gov/sites/humanresources/files/documents/Labor_Relations_Policy_EEO/Policy_Procedure_Manual/Number_5.2_CONFLICTS_OF_INTEREST_ARISING_FROM_EMPLOYMENT.pdf.

Vermont Human Resources Department Procedure 5.6, *Employee Conduct*, applies to all State of Vermont employees, and provides explicit statements of required and prohibited conduct. It may be accessed

here: http://humanresources.vermont.gov/sites/humanresources/files/documents/Labor_Relations_Policy_EEO/Policy_Procedure_Manual/Number_5.6_EMPLOYEE_CONDUCT.pdf

4.1.1.2 Legal Elements. Authority to Establish a Program and Enter into an Agreement. Evaluation Criteria.

Commented [IW21]: NRC Comment 11.

4.1.1.2.a. State law must authorize the Governor to enter into an Agreement. It must also designate a radiation control agency and provide it the necessary legal authority to be effective.

18 VSA § 1653(a) authorizes the Governor of Vermont to enter into an Agreement with the Nuclear Regulatory Commission:

“The Governor, on behalf of the State of Vermont, may enter into agreements with the federal government providing for ~~the~~ discontinuance of certain of the federal government’s responsibilities with respect to by-product, source, and special nuclear materials and the assumption of these responsibilities by the State of Vermont.”²²

18 VSA § 1652(a) identifies the Vermont Department of Health as the designated radiation control agency:

“The Department is the radiation control agency for the State of Vermont. The Commissioner may designate the Radiation Control Director within the Department as the individual who shall perform the functions vested in the Department by this chapter.”²³

Section 1652(b), (c) and (d) and Section 1653(b)(1) and (2)(C) provide the necessary legal authority to be effective. 18 VSA § 1652(c) and (d) state:

“(b) The Department shall, for the protection of the occupational and public health and safety, develop programs for the control of ionizing and nonionizing radiation compatible with federal programs for regulation of by-product, source and special nuclear materials.

(c) The Department may adopt, amend, and repeal rules under 3 V.S.A. chapter 25, that may provide for licensing and registration for the control of sources of ionizing radiation and that may provide for the control and regulation of sources of nonionizing radiation.

(d) The Department shall advise, consult, and cooperate with other agencies of the State, the federal government, other states and interstate agencies, political subdivisions, industries, and with groups concerned with control of sources of ionizing and nonionizing radiation.”

With respect to nonionizing radiation referenced in 1652(b), the Vermont General Assembly vested in the Vermont Department of Health authority to address issues related to nonionizing radiation decades ago. That authority is used to evaluate health issues related to laser radiation, ultraviolet radiation, radiofrequency radiation, extremely low frequency electromagnetic fields and other nonionizing radiations and the Department must maintain that authority.

§ 1653(b)(1) adds that:

Commented [IW22]: NRC Comment 12

Commented [JS23]: Added back reference to 1652(b) and noted VT’s clarification regarding nonionizing radiation.

Commented [CT24]: Suggest adding State language from the letter.

“The Department shall provide by rule for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. The rule shall provide for amendment, suspension, or revocation of licenses. A rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC except as the Commissioner determines is necessary to protect public health.”

Commented [IW25]: NRC Comment 6.

§ 1653(b)(2)(C) adds that: “The Department shall have authority to “require that licensees and unlicensed individuals comply with the federal statutes and regulations relating to the authority assumed by the Department under this section and the rules adopted by the Department under this section.”

4.1.1.2.b State law must not create duplications, gaps, or conflicts in regulation. This includes duplications, gaps, or conflicts between the State and the NRC, state agencies, or state and local agencies. The law must not seek to regulate materials or activities reserved to the NRC.

The State of Vermont is incorporating the required parts of 10 CFR, [Chapter I](#) by reference to eliminate the possibility of duplications, gaps, or other conflicts in regulation, including duplications, gaps, or conflicts between the State and the NRC, state agencies, or state and local agencies.

Relative to activities reserved to NRC regulation, § 1653(c) states that “this section does not confer authority to regulate materials or activities reserved to the NRC under 42 U.S.C. § 2021 (c) and 10 CFR Part 150.”

Commented [IW26]: NRC Comment 13.

Preventing duplications, gaps, and conflicts between state agencies is addressed at 18 VSA § 1652(d) which states that “[t]he Department shall advise, consult, and cooperate with other agencies of the State, the federal government, other states and interstate agencies, political subdivisions, industries, and with groups concerned with control of sources of ionizing and nonionizing radiation.”

4.1.1.2.c. State law must authorize issuing licenses as the means of giving the authority to possess and use Agreement materials. It should also authorize the reciprocal recognition of specific licenses issued by the NRC or other Agreement State.

18 VSA § 1653(b)(1) authorizes the issuance of licenses to use Agreement materials:

“The Department shall provide by rule for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. The rule shall provide for amendment, suspension, or revocation of licenses. A rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC except as the Commissioner determines is necessary to protect public health.”

§ 1653(b)(2)(B) authorizes the reciprocal recognition of specific licenses issued by the NRC or other Agreement State in the event Vermont becomes an Agreement State. It states that the Department shall have the authority to “reciprocate in the recognition of specific licenses issued by the NRC or another state that has reached agreement with the NRC pursuant to 42 U.S.C. § 2021(b)(agreement state).”

4.1.1.2.d. State law should authorize the use of license conditions to address matters unique to the license. The law should allow license conditions to impose additional requirements when required to protect public health and safety. If the law restricts the use of license conditions, the State should show that they can provide adequate protection under the restrictions. The protection should be at least equivalent to using license conditions and orders.

18 VSA § 1653(b)(2)(A) states that the Department shall have the authority to “impose conditions that are individual to a license when necessary to protect public health and safety.” State law does not restrict the use of license conditions.

4.1.1.2.e. The law should permit exemptions from licensing requirements if the exemptions do not adversely affect public health and safety. This should include exemptions from the requirement to obtain a license.

18 VSA § 1653(b)(2)(D) provides the Department the authority to “exempt certain by-product, source, or special nuclear materials, or kinds of uses, or users from the licensing or registration requirements set forth in this section when the Department makes a finding that the exemption of such materials, or kinds of uses, or users will not constitute a significant risk to the health and safety of the public.”

Because Vermont is incorporating relevant parts of 10 CFR by reference, as is the case for the NRC, Vermont will authorize exemptions from licensing substantially equivalent to the requirements of *Handbook for Processing an Agreement* Section 4.1.1.2(e)(4) 1. through 4., below:

1. Prime contractors working for the U.S. Department of Energy (DOE) at U.S. Government-owned or controlled sites.
 2. Prime contractors researching, developing, manufacturing, storing, testing or transporting atomic weapons or components.
 3. Prime contractors using or operating nuclear reactors or other nuclear devices in a U.S. Government-owned vehicle or vessel; and
- Any other prime contractor (or subcontractors) of DOE or NRC when the State and NRC jointly determine (i) that the terms of the contract provide adequate assurance that the contractor can accomplish the work without undue risk to public health and safety and (ii) that the law authorizes exemptions.

The particular sections of 10 CFR the State of Vermont is incorporating by reference relevant to exempting the above contractors, among others are 10 CFR 30.12, 40.11 and 70.11.

Commented [JS27]: VT cannot issue these exemptions as the state does not have the authority to license these activities.

Commented [CT28]: This is one specific type of exemption for a limited subset of activities by DOE prime contractors. VT also needs to include the “specific exemption” provisions from 10 CFR 30.11, 40.14, and 70.17 in this discussion.

Commented [IW29]: NRC Comment 14.

4.1.1.2.f. The law must authorize the Agreement materials program to enforce regulations or generic legally binding requirements other than regulation. The law may authorize another agency (such as a Board of Health) to adopt the regulations. When appropriate, the law should provide for public participation.

18 VSA § 1653 (b)(1), 1656, and 1657 authorizes the Department to enforce regulations or generic legally binding requirements other than regulations.

18 VSA § 1653(b)(1) provides that in the event of such agreement:

“The Department shall provide by rule for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. The rule shall provide for amendment, suspension, or revocation of licenses. A rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC except as the Commissioner determines is necessary to protect public health.”

18 VSA § 1656 states:

“Whenever, in the judgement of the Department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule issued thereunder, the Attorney General shall make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the Department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.”

18 VSA § 1657 adds that “any person who violates this chapter or rules in effect pursuant thereto shall, upon conviction thereof, be imprisoned not more than six months; or fined not more than \$500.00 or less than \$100.00, or be both imprisoned and fined.”

Commented [IW30]: NRC Comment 15.

4.1.1.2.g. The law must authorize inspections of licensee operations to ensure compliance with regulatory requirements. It should authorize inspections of unlicensed facilities to assess the risk resulting from accidents or environmental releases of materials. The law should permit access at all reasonable times.

18 VSA § 1654 provides for inspection and entry upon any private or public property at all reasonable times:

“The Department or its duly authorized representatives may enter at all reasonable times upon any private or public property for the purposes of determining whether or not there is compliance with or violation of this chapter and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government

shall be made only with the concurrence of the federal government or its duly designated representative.²²

4.1.1.2.h The law should provide authority to take prompt enforcement action and should provide a variety of legal sanctions. The law should provide authority to suspend licenses and to impound materials. In cases of an imminent threat to public health and safety, the law should authorize immediate suspension without prior hearing.

The following sections of Title 18 provide for enforcement action, legal sanctions, license suspension, material impoundment, and immediate suspension without prior hearing (in the case an emergency exists requiring immediate action to protect the public health and safety.)

18 VSA § 1655(b) authorizes the Department to take immediate action in an emergency without a prior hearing:

“Whenever the Department finds that an emergency exists requiring immediate action to protect the public health and safety, the Department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as is necessary to meet it. Notwithstanding any contrary provision of this chapter, the order shall be effective immediately. Any person to whom the order is directed shall comply with the order immediately, but on application to the Department shall be afforded a hearing within ten days. ~~Based On the basis of~~ on the hearing, the emergency order shall be continued, modified, or revoked within ten days after the hearing.”²²

18 VSA § 1653(b)(1) mandates that the Department’s rule provides for amendment suspension, or revocation of licenses.

“The Department shall provide by rule for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. The rule shall provide for amendment, suspension, or revocation of licenses. A rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC except as the Commissioner determines is necessary to protect public health.”²²

In 18 VSA § 1653(b)(7)(B) provides the Department with the authority to impound materials:

“The Department shall have the authority in the event of an emergency to impound or order the impounding of by-product, source, and special nuclear materials in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules adopted under this chapter.”²²

18 VSA § 1655(a) provides additional enforcement capabilities and provides for a public hearing:

~~(a)~~ In any proceeding under this chapter for the issuance or modification of rules relating to control of by-products, source, and special nuclear materials; or for granting, suspending, revoking, or amending any license; or for determining compliance with or granting exemptions from rules and regulations of the Department, the Department shall hold a public hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to the proceeding, subject to the emergency provisions ~~in~~ subsection (b) of this section.

18 VSA § 1656 provides the authority for the Department to immediately enjoin any acts or practices through application to the appropriate court by the Attorney General:

Commented [CT31]: The Department can't enjoin acts, it can only apply to the courts for such an action. This discussion should be revised accordingly.

“Whenever, in the judgement of the Department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule issued thereunder, the Attorney General shall make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the Department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

In addition, section 10.1.1 of the Radiological Health Rule permits the Department to impose sanctions for violation of the regulations:

Whenever the Department has reasonable grounds to believe that there has been a violation of any of the provisions of this rule, the Department may take appropriate action as provided in this subsection or otherwise provided in law at 18 V.S.A. Ch. 32, to protect the public health and safety.

In turn, § 1657 of 18 V.S.A. Ch. 32 ”

18 VSA § 1657 also provides that “any person who violates this chapter or rules in effect pursuant thereto shall, upon conviction thereof, be imprisoned not more than six months; or fined not more than \$500.00 or less than \$100.00, or be both imprisoned and fined.”

Commented [JS32]: Added to give fuller picture of relevant enforcement authority

Additional enforcement actions are available to the Department and are found in 18 VSA § 101 - 131 at: <http://legislature.vermont.gov/statutes/chapter/18/003>. These powers include issuance of search warrants in § 121, revocation of permits in § 123, health orders in § 126, emergency health orders in § 127, stay in § 129, civil enforcement in § 130, and criminal penalty in § 131.

Commented [JS33]: Only the Court can issue search warrants, health officer can only apply for one.

Commented [JS34]: Section 129 does not seem to grant the Department “stay power” since section 129 only states that an appeal will not stay the effectiveness of an order unless the Board or Court say otherwise.

4.1.1.2.i. The law should authorize suspension or revocation of a license for repeated or continued noncompliance. The authority to suspend or revoke a license may be conditioned on a prior administrative or judicial hearing. The program should also have authority to seek injunctive relief and refer licensees for criminal prosecution. The program should also consider authority to impose civil or administrative monetary penalties.

~~The following sections of Title 18 of the Vermont Statutes authorize suspension or revocation of a license for repeated or continued noncompliance, impose civil or administrative monetary penalties, and allow the Department to seek injunctive relief.~~

If licensees are not in compliance with the statute or rule, the Department can bring an action in the county Superior Court to seek enforcement. The court can levy civil penalties up to \$10,000 for each violation, and in the case of a continuing violation, a penalty can be levied each day the violation continues. 18 V.S.A. § 130. ~~18 V.S.A. § 131 provides for criminal penalties are also available~~ for any person who refuses to obey or comply with an order ~~in 18 V.S.A. § 131~~. In addition, the Department can enter into an assurance of discontinuance (AOD) with a licensee requiring specific actions to be taken and imposition of a fine. AODs are filed in Superior Court and become an order of the court. Evidence of a violation of the AOD is prima facie proof of the violation cited in the assurance. 18 V.S.A. § 125.

The following sections of Title 18 of the Vermont Statutes authorize suspension or revocation of a license for repeated or continued noncompliance, impose civil or administrative monetary penalties, and allow the Department to seek injunctive relief.

18 VSA § 1655(b) allows the Department to take immediate action without notice or hearing to protect the public's health and safety in an emergency:

“Whenever the Department finds that an emergency exists requiring immediate action to protect the public health and safety, the Department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as is necessary to meet it. Notwithstanding any contrary provision of this chapter, the order shall be effective immediately. Any person to whom the order is directed shall comply with the order immediately, but on application to the Department shall be afforded a hearing within ten days. ~~Based on~~ On the basis of the hearing, the emergency order shall be continued, modified, or revoked within ten days after the hearing.”

18 VSA § 1656 provides for immediate injunctive relief:

“Whenever, in the judgement of the Department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule issued thereunder, the Attorney General shall make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the Department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.”²⁴

Commented [IW35]: NRC Comment 16.

18 VSA § 1657 also provides that “any person who violates this chapter or rules in effect pursuant thereto shall, upon conviction thereof, be imprisoned not more than six months; or fined not more than \$500.00 or less than \$100.00, or be both imprisoned and fined.”

Additional enforcement actions are available and are found in 18 VSA § 101 -131 at: <http://legislature.vermont.gov/statutes/chapter/18/003>. These powers include ~~issuance of search warrants in § 121,~~ revocation of permits in § 123, health orders in § 126, emergency health orders in § 127, ~~stay in § 129,~~ civil enforcement in § 130, and criminal penalty in § 131.

4.1.1.3 Additional Criteria for Low Level Waste Agreements.

The law must authorize appropriate restrictions on land ownership and use of sites used for disposal of LLRW for an indefinite period after closure.

The State of Vermont is not requesting regulatory authority on land ownership and the use of sites used for the disposal of low-level radioactive waste depositories in the State of Vermont for an indefinite period after the closure of the site.

4.1.1.4 Additional Evaluation Criteria for 11e. (2) Byproduct Material Agreements.

The law should clearly authorize the Agreement materials program to carry out the requirements of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (UMTRCA).

The State of Vermont is not requesting regulatory authority for the requirements of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (UMTRCA).

4.1.2 *Organization of the Proposed Program*

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4.1.2 Organization of the Proposed Program

The organization of an Agreement materials program provides the basic organizational structure and resources to conduct the program activities. The Agreement materials program organization thus influences the ability of the program to protect public health and safety against radiation hazards.

4.1.2.1 Information Needed. The State should submit a concise narrative description of the materials program.

4.1.2.1.a A brief history of radiation control in the State.

Some of the following is taken from *100 Years of Public Health in Vermont 1886 – 1986*, a calendar produced by the Vermont Department of Health in 1986.

As with many states in the eastern United States, public health has a long history. In Vermont, the roots of what exists today started in 1886 with passage of a bill creating the State Board of Health. Other fixtures that remain today are the Vermont State Laboratory of Hygiene established by the legislature in 1898 and Vermont's Town Health Officer Program in 1899. In the subsequent decades, many laws were passed to improve public health. Some were the responsibility of the Industrial Hygiene Division and the Division of Sanitary Engineering, predecessors to the Environmental Health Division today.

The Industrial Hygiene Division was called the Occupational and Radiological Health Division in the late 1960s when the Yankee Atomic Electric Corporation designed and began to build the Vermont Yankee Nuclear Power Station. It began operations in 1972 and allowed for greater capabilities in other radiological health areas from naturally occurring radioactive materials to x-ray machines. Emergency preparedness, environmental surveillance, and public dose management capabilities were especially enhanced. Machine skills were particularly bolstered by 1994's Mammography Quality Standards Act.

The Vermont Nuclear Power Plant in Vernon ceased operations in December of 2014. Today, many of the Vermont Radiological Emergency Response Plan procedures for state, local, and private Offsite Response Organizations that would respond if an accident occurred at Vermont Yankee have been shelved as the emergency planning zone has been reduced to just within the plant boundaries. The Department of Health continues to prepare for radiological emergencies that might result from industrial accidents at Vermont Yankee or offsite transportation accidents involving radioactive materials leaving the facility. Some of the resources for Vermont Yankee emergencies have been redeployed across the state to provide for coverage for any radiological or nuclear emergency.

The Radiological Sciences Program also continues to train and otherwise support the Vermont Hazardous Materials Response Team (VHMRT) which is the State's primary radiological and nuclear first responders. In addition to being ready for Vermont Yankee incidents, the VHMRT is fully capable of response and initial recovery from almost any radiological or nuclear incident. Part of this is a residual of decades of training and exercising comprehensive skills and knowledge, and part of this comes from Vermont's leadership in national homeland security and

emergency preparedness efforts. Dovetailing with this is Vermont's recent development and implementation of a Preventive Radiological Nuclear Detection Program.

Concurrently, Vermont has maintained its role as regulator for occupational and public radiological health and safety relative to radiation machines. The Radiological Sciences Program registers and inspects approximately 500 x-ray facilities, including sixteen inspected under a contract with the U.S. Food and Drug Administration.

4.1.2.1.b A description of the current structure of the program, including regional offices.

The State of Vermont seeks to enter into an Agreement with the NRC for assuming regulatory authority over byproduct radioactive materials, source materials, special nuclear materials in quantities not sufficient to form a critical mass, and those materials transferred to the NRC by the Energy Policy Act of 2005. This authority will reside in the Vermont Department of Health, the radiation control agency for the State of Vermont. Staff administering the program are part of the Department's Radiological Sciences Program. Essentially all required regulatory elements of the Radioactive Materials Program (RMP) are carried out by the staff within the Radiological Sciences Program in the Department of Health. The Attorney General's Office can seek injunctive relief when, in the judgement of the Department, a "person has engaged in or is about to engage in any acts or practices in violation of Vermont's Radiation Control statute and/or rule. 18 V.S. A. § 1656. The Department of Health is within the Vermont Agency of Human Services as shown in Figure 1.

Commented [IW36]: NRC Comment 17.

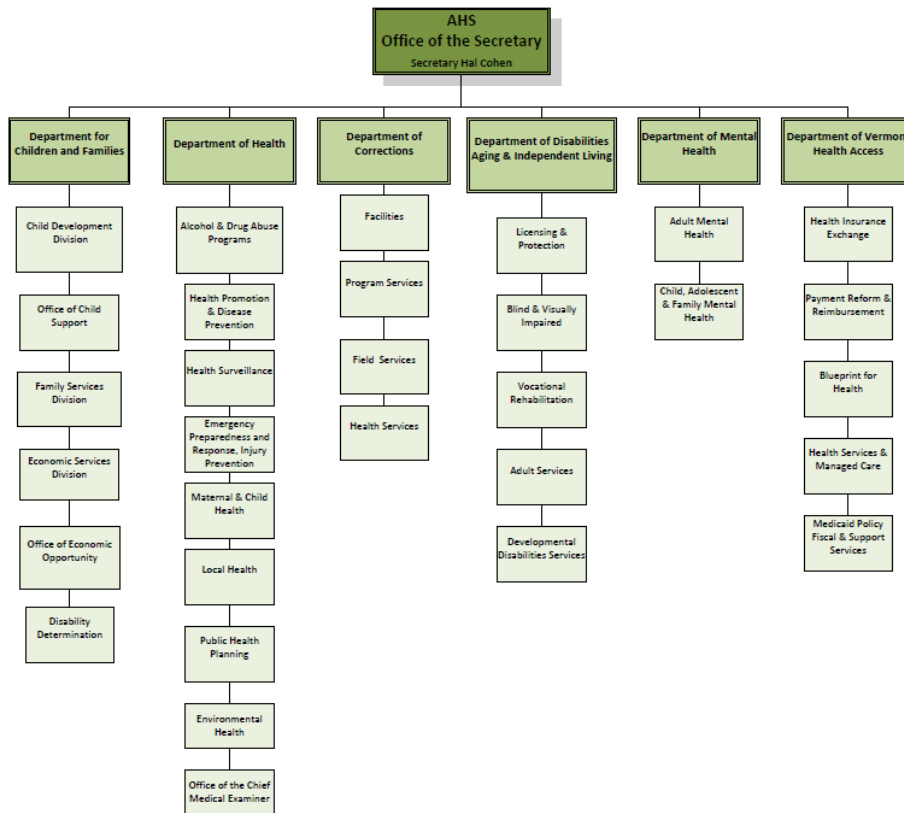


Figure 1: Agency of Human Services Organization Chart

The Agency of Human Services is Vermont’s largest agency and the Secretary of Human Services reports directly to the governor as seen in Figure 2. More information about the Agency of Human Services may be found at its website: <http://humanservices.vermont.gov/>.

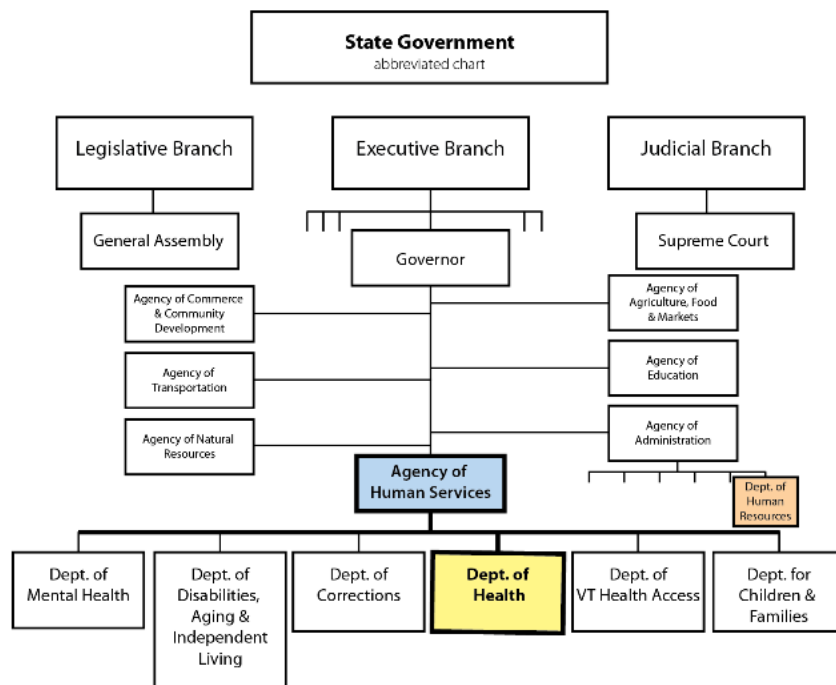


Figure 2: Vermont State Government Abbreviated Chart

The Department of Health is the largest department in the Agency of Human Services. Its vision is of “healthy Vermonters living in healthy communities”, and its mission is to “protect and promote the best health for all Vermonters”. More details about the Department may be found at its website: <http://healthvermont.gov/>. This includes the Department leadership and organizational charts. The Department is organized according to Figure 3.

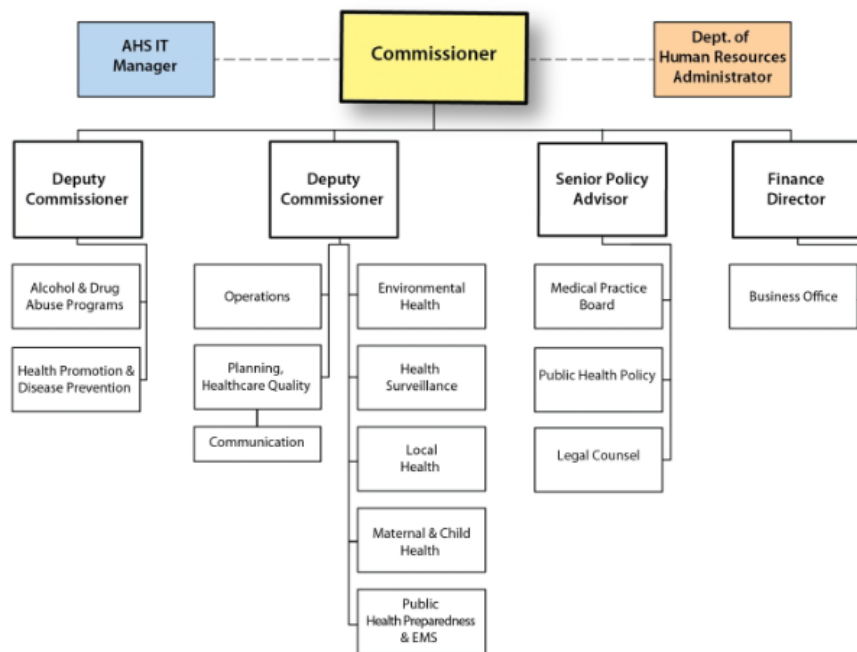


Figure 3: Vermont Department of Health Organization

The Radiological Sciences Program resides within the Environmental Health Division, one of seven organizations under the Deputy Commissioner of Public Health. These are shown in Figure 4. The Division of Environmental Health is described by the organization chart in Figure 5. The Department Local Health Division includes twelve district offices which partner with local organizations and health care providers to provide health services and promote wellness in the communities of Vermont. Staff at Local Health generally do not conduct work directly related to the Agreement State Radioactive Materials Program.

Deputy Commissioner of Public Health
 June 2018

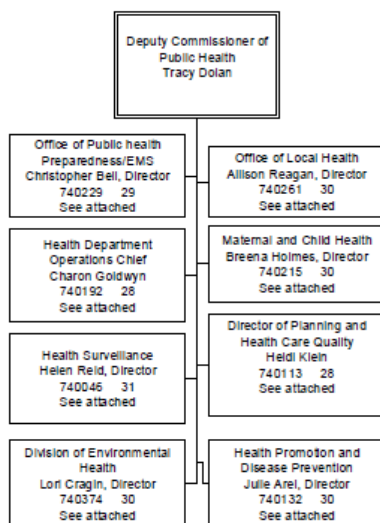


Figure 4: Deputy Commissioner of Public Health
From VDH Intranet

The Radiation Control Program Director for Vermont is the Radiological Sciences Chief. Within his group are two people who work full-time in radiological health. The Senior Radiological Health Specialist is the Radioactive Materials Program Manager, and the Radiological and Toxicological Scientist is the Radiation Machine Program Manager. The work to maintain the radioactive materials Agreement State Program will be accomplished primarily by these three people. The Senior Radiological Health Specialist, Fran O'Neill, is the program manager, and will devote 100 percent of his time to it. The Radiological and Toxicological Scientist and Radiological Sciences Chief will both be fully qualified to review and process radioactive materials licenses and perform licensee inspections. Each will devote up to 25 percent of their time to the radioactive materials Agreement State Program. Resumes for each of these three people are attached.

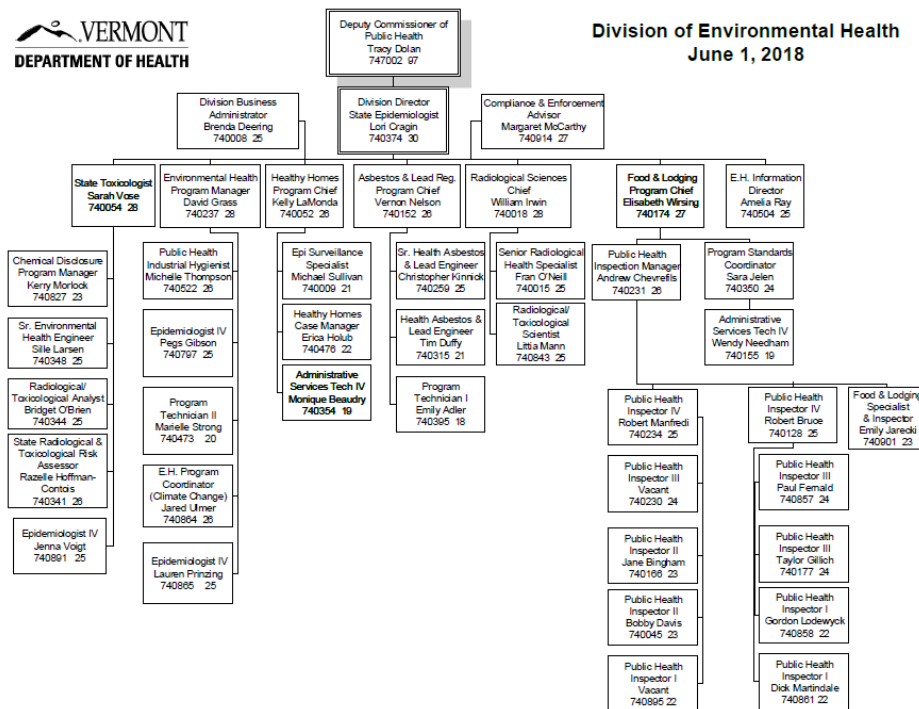


Figure 5: Division of Environmental Health
From VDH Intranet

Members of the State Toxicologist staff support radiological health programs to varying degrees. The State Radiological and Toxicological Risk Assessor conducts risk analyses for radiological environmental agents and leads the assessment scientists for radiological and nuclear emergencies. The Radiological and Toxicological Analyst devotes most of her time to emergency preparedness, including for radiological and nuclear emergencies. The Senior Environmental Health Engineer is responsible for the Department's private drinking water program and evaluates radiological contaminants in private drinking water and identifies solutions for excessive levels.

The Radiological Sciences Program also engages with others at the Department of Health for radiological health protection issues. This includes assisting the Environmental Health Radon Program and the Public Health Laboratory in the Health Surveillance Division. The Public Health Lab staff are well trained, and proficiency tested for numerous radiochemistry analytical techniques with decades of experience analyzing thousands of environmental surveillance

samples from around the shutdown Vermont Yankee Nuclear Power Station. Analyzed samples have been from air, drinking water, surface water, soil, sediments, milk, natural vegetation, fish, packaged foods, and animal feeds. The Public Health Lab radiochemistry capabilities have been very useful for a variety of radiological incidents.

The Radiological Sciences Program also engages with other Departments and Agencies of Vermont government in radiation protection work. This includes the Department of Public Service for issues related to the Texas Low Level Radioactive Waste Compact, the Department of Public Safety for radiological emergency preparedness and the preventive radiological nuclear detection program, the Department of Environmental Conservation (DEC) within the Agency of Natural Resources (ANR) for low level radioactive waste management and naturally occurring radioactive materials, ANR's Department of Parks and Recreation and DEC, as well as the Agency of Agriculture, Food, and Markets for radiological impacts on the environment and food.

Commented [IW37]: NRC Comment 20.

The Radiological Sciences Program is equipped with significant resources for routine and non-routine radiation protection activity. This includes dozens of portable instruments, large caches of environmental surveillance and emergency response supplies, and a motor vehicle. In addition, the program has created written plans to define policies and methods to meet required capabilities and procedures providing detailed instructions for specific work practices. An instrument inventory, including those at the Public Health Lab, is found in Appendix I.

Vermont is a founding member of the New England Radiological Health Compact which is defined in statute. 18 VSA §§ 1601–1622. The other members are the radiation control programs from Connecticut, Maine, Massachusetts, New Hampshire, and Rhode Island. Copies of the Compact and the enabling statute for Vermont are found in Appendices H and K. The Compact is primarily for radiological or nuclear emergencies but has been activated for non-emergency aid to member states, including for temporary staff support when vacancies exist in other member state radioactive materials or radiation machine programs. Members of the compact have met annually for 47 years in conferences that allow discussion of radioactive materials and other issues of mutual interest.

4.1.2.1.c. Individual discussions of each of the program elements in Section 4.0 of the Handbook.

Legal Elements of the Agreement State Radioactive Materials Program.

The Agreement State Radioactive Materials Program (RMP) is founded in statute described in the Vermont Statutes Title 18: Health, Chapter 32. This is referred to as 18 VSA §§ 1651–1657. The statute designates the Vermont Department of Health as the radiation control agency and, among other duties, provides radioactive materials licensing, inspection, and regulatory compliance enforcement authority to the Department. In accordance with 3 VSA § 800 – 849, Vermont's Administrative Procedures Act, the Department makes rules to regulate radioactive materials licensees. All the statutory information needed to address the evaluation criteria in the Handbook for Processing an Agreement is provided in Section 4.1.1 of this application.

Commented [IW38]: NRC Comment 18.

The Department has chosen to incorporate parts of Title 10 Chapter I of the Code of Federal Regulations (10 CFR) by reference, rather than create separate compatible rules. The Department's rules are found in the Code of Vermont Rules, within those for the Agency of Human Services, the Department of Health as sub-agency, and finally within Chapter 6 for the Environmental Health Division of the Department. The regulations themselves are ~~called~~ the found in Subchapter 5, Radiological Health Rule, and it is Subchapter 5. The current version of the Radiological Health Rule may be accessed here: http://www.healthvermont.gov/sites/default/files/documents/2016/12/REG_radiological-health.pdf.

The Radiological Health Rule ~~is in~~ has four sections. Section I, Overview, contains 10 subsections relating to all radioactive materials licensees and all registrants of radiation generating machines. Those subsections of Section I relating to radioactive materials incorporate 10 CFR by reference. This is seen in Subsection 1.0 General Provisions, Subsection 6.0 Standards for Protection Against Radiation, Subsection 7.0 Notices, Instruction, Reports to Workers, Inspection and Investigations, and Subsection 9.0 Licensing of Radioactive Materials and Registration of Radiation Producing Machines.

Section II Radioactive Materials contains eight subsections that apply only for ~~to~~ users of radioactive materials. Each subsection incorporates a part of 10 CFR by reference in accordance with the subject matter. Section III Radiation Producing Machines contains five subsections that apply only to ~~for~~ users of radiation producing machines. The subsections here incorporate specific Suggested State Regulations (SSRs) as published by the Conference of Radiation Control Program Directors. These are SSRs Part B, Registration of Radiation Machine Facilities, Services and Associated Healthcare Professionals; Part F, Medical Diagnostic and Interventional X-Ray Systems; Part H, Radiation Safety Requirements for Non-Healing Arts Radiation Generating Devices; Part I, Radiation Safety Requirements for Particle Accelerators; and Part X, Therapeutic Radiation Machines.

Commented [IW39]: NRC Comment 19.

Commented [IW40]: NRC Comment 20.

Table 1
Sections of the Radiological Health Rule

Section I Overview

- 1.0 General Provisions
- 2.0 Compliance Monitoring
- 3.0 Prohibitions and Restrictions
- 4.0 Exemptions
- 5.0 Fees
- 6.0 Standards for Protection Against Radiation
- 7.0 Notices, Instructions, Reports to Workers; Inspections and Investigations
- 8.0 Financial Assurance
- 9.0 Reserved
- 10.0 Enforcement

Section II Radioactive Materials

- 11.0 Licensing of Radioactive Materials
- 12.0 Rules of General Applicability to the Licensing of Radioactive Materials
- 13.0 Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials
- 14.0 Medical Use of Byproduct Material
- 15.0 Radiation Safety for Industrial Radiography
- 16.0 Licenses and Radiation Safety Requirements for Well Logging
- 17.0 Licenses and Radiation Safety Requirements for Irradiators
- 18.0 Packaging and Transportation of Radioactive Material

Section III Radiation Producing Machines

- 19.0 Registration of Radiation Machine Facilities, Services, and Associated Healthcare Professionals
- 20.0 Medical, Diagnostic, and Interventional X-Ray and Imaging Systems
- 21.0 Radiation Safety Requirements for Non-Healing Arts Radiation Generating Devices
- 22.0 Radiation Safety Requirements for Particle Accelerators
- 23.0 Therapeutic Radiation Machines

Commented [IW41]: NRC Comment 20. Eliminated application references to Vermont Yankee

Legal elements of the RMP are understood by the staff of the RMP for administrative and operational purposes. When legal assistance is needed, for example with revising statute or regulations, or for routine or escalated enforcement actions, the Office of the Senior Policy Advisor may provide official policy and legal advice. The Office is shown in Figure 6.

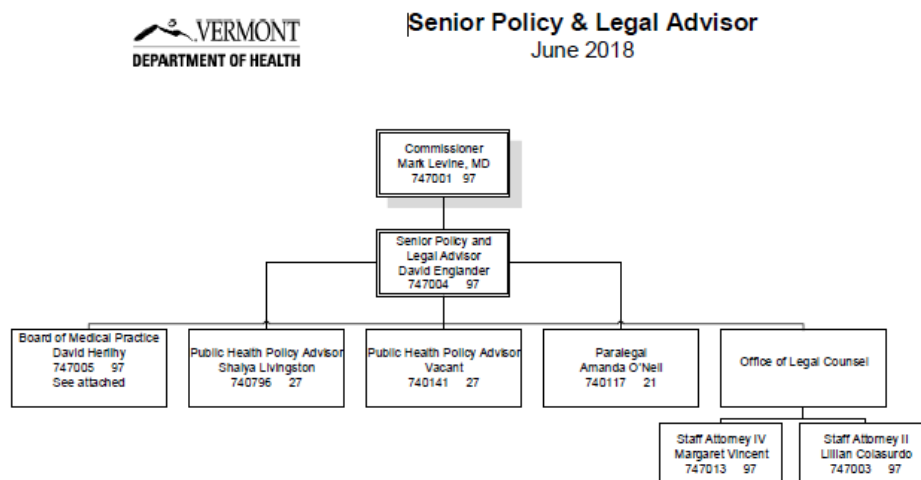


Figure 6: Senior Policy & Legal Advisor
From VDH Intranet

The office of the Public Health Policy Advisor assists the RMP primarily with rulemaking, while the Staff Attorneys provide legal counsel to RMP staff and conduct legal review and interpretation for the RMP staff. The Senior Policy and Legal Advisor provides legal counsel for the RMP, the Environmental Health Division, the Health Commissioner, and the Department of Health as a whole. The Office of Legal Counsel can assist in the legal matters that arise between Department staff and programs and other state agencies, local agencies, federal agencies, business entities, and the public.

For the Agreement State application process, the office of the Senior Policy and Legal Advisor has worked with RMP staff in revising Vermont Statute to ensure there exists authority to enter into an Agreement, revising the Radiological Health Rule to ensure compatibility with NRC regulations and to meet the requirements of Vermont's Administrative Procedures Act (3 VSA § 840), and reviewed this Request for an Agreement for legal purposes. The Radiation Control Program Director has direct access to the Senior Policy and Legal Advisor and his staff of attorneys and policy advisors.

4.1.2.1.d. For each program element, cross references to the pertinent portions of the state's supporting documentation for the application.

Table 2 provides a cross-reference from each of the elements in the *Handbook for Processing an Agreement* to Vermont references.



Table 2

Cross Reference of Program Elements 4.1 Through 4.7 to Vermont and NRC References

Commented [IW42]: NRC Comment 21

Section	Program Element	Information from Vermont	Criteria Number	References
4.1	Legal Elements			
4.1.1	Statutory Authority	Vermont Statutes Title 18: Health; Chapter 32 (18 VSA § 1651–1657).	1, 2, 9b, 12, 13, 14, 17, 19, 21, 23, 24, 25, 27, 28, 29, 30, and 31.	Criteria Policy Statement; Suggested State Legislation; Statement of Principles and Policy for the Agreement State Program.
4.1.2	Program Organization	Application text in Section 4.1.2.	1, 24, and 33.	Criteria Policy Statement; Program descriptions of existing Agreement States from IMPEP reports; MD 5.9; SA-200.
4.1.3	Content of Agreement	Application text in Section 4.1.3, including Proposed Agreement.	27.	Criteria Policy Statement MD 5.8.
4.2	Regulatory Requirements Program Elements			
4.2.1	Radiation Protection Elements	Incorporation of 10 CFR 20 by reference with exceptions and Vermont Radiological Health Rule Section 6.0.	2, 3, 4, 5, 6, 9a, 11, 22, and 23.	Criteria Policy Statement MD 5.9; SA-200; 10 CFR Parts 20, 30, 32, 34, 35, 37, 40, 70, and 150; CRCPD SSRs.
4.2.2	Transboundary Requirements	Incorporation of 10 CFR 20 by reference with exceptions and Vermont Radiological Health Rule Section 6.0.	9(a) and (b), 10, and 23.	Criteria Policy Statement; MD 5.9; SA-200 Appendix A; 10 CFR Parts 19, 20, 30, 31, 32, 34, 35, 36, 37, 39, 40, 70,

				71, and 150; CRCPD SSRs.
4.2.3	Orderly Pattern of Regulation	Incorporation of 10 CFR 20 by reference with exceptions and Vermont Radiological Health Rule Section 6.0.	1, 7, 8, 11, 23, and 32	Criteria Policy Statement; MD 5.6; 10 CFR Parts 19, 20, 30, 31, 34, 35, 36, 39, 40, 70, 71, and 150; CRCPD SSRs.
4.2.4	Health and Safety Significance	Incorporation of 10 CFR 20 by reference with exceptions and Vermont Radiological Health Rule Section 6.0.	1, 7, 8, 11, 23, and 32	Criteria Policy Statement; MD 5.6; 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 70, 71, and 150; CRCPD SSRs.
4.3	Licensing Program Elements			
4.3.1	Materials Licensing	RMPP 1.1 <i>Review of Initial Application for License or an Amendment Request</i> . RMPP 1.2 <i>Renewal of Licenses</i> , RMPP 1.3 <i>License Termination/Revocation</i> , RMPP 1.4 <i>NRC Licenses Affected by Agreement States</i> , and RMPP 4.1 <i>Renewal Notices, Receipt and Tracking of Licensing Actions</i> . The Department is incorporating by reference specific licensing procedures and licensing guidance of the NRC including the NUREG 1556 Series.	1, 7, 8, 9a, 13, 14, 15, 20, and 23.	Criteria Policy Statement; MD 5.6; SA-104; NUREG-1556 series; NUREG-1757; NUREG-1575 (MARSSIM).
4.3.2	Sealed Source & Device Safety Evaluations	N/A	13 and 23.	Criteria Policy Statement;

				NUREG-1556, Volume 3; MD 5.6.
4.3.3	Low-Level Waste Site Licensing	N/A	9b and 13.	Criteria Policy Statement; NUREG-1199; NUREG 1200; NUREG-1300; NUREG-1274; MD 5.6; SA-109.
4.3.4	Uranium or Thorium Mill Licensing	N/A	29, 30, 31, 32, 33, 34, and 35.	Criteria Policy Statement; Uranium Recovery Regulations, Guidance and Communications; MD 5.6; SA-110.
4.3.5	Licensing Quality Assurance	RMPP 1.1 <i>Review of Initial Application for License or an Amendment Request.</i> RMPP 1.2 <i>Renewal of Licenses</i> , RMPP 1.3 <i>License Termination/Revocation</i> , RMPP 1.4 <i>NRC Licenses Affected by Agreement States</i> , and RMPP 4.1 <i>Renewal Notices, Receipt and Tracking of Licensing Actions</i> . The Department is incorporating by reference specific licensing procedures and licensing guidance of the NRC including the NUREG 1556 Series.	1 and 13.	Criteria Policy Statement; MD 5.6; SA-104.
4.3.6	Licensing Administrative Procedures	RMPP 1.1 <i>Review of Initial Application for License or an Amendment Request.</i> RMPP 1.2 <i>Renewal of Licenses</i> , RMPP 1.3	1, 13, and 25.	Criteria Policy Statement.

		<p><i>License Termination/Revocation, RMPP 1.4 NRC Licenses Affected by Agreement States, and RMPP 4.1 Renewal Notices, Receipt and Tracking of Licensing Actions.</i> The Department is incorporating by reference specific licensing procedures and licensing guidance of the NRC including the NUREG 1556 Series. Described in Section 4.3 of the Application to Become an NRC Agreement State.</p>		
4.4	Inspection Program			
4.4.1	Inspection Procedures	<p>RMPP 2.1 <i>Scheduling of Inspections</i>, RMPP 2.2 <i>Inspection Preparations</i>, RMPP 2.3 <i>Performance-Based Inspections</i>, RMPP 2.4 <i>Documentation of Inspection Results</i>, and RMPP 2.7 <i>Assuring the Technical Quality of Inspections</i> and RMPP 4.2 <i>Tracking Inspections</i>. The Department is incorporating by reference specific inspection procedures and guidance of the NRC including Inspection Manual Chapter 2800. Described in Section 4.4 of the</p>	1, 16, 18, and 36.	Criteria Policy Statement; MD 5.6; SA-101; SA-102; IMC 1220; IMC 2800; IMC 2801; NRC Inspection Procedures in the IP 8XXXX series.

		Application to Become an NRC Agreement State.		
4.4.2	Inspections Quality Assurance	RMPP 2.1 <i>Scheduling of Inspections</i> , RMPP 2.2 <i>Inspection Preparations</i> , RMPP 2.3 <i>Performance-Based Inspections</i> , RMPP 2.4 <i>Documentation of Inspection Results</i> , and RMPP 2.7 <i>Assuring the Technical Quality of Inspections</i> and RMPP 4.2 <i>Tracking Inspections</i> . The Department is incorporating by reference specific inspection procedures and guidance of the NRC including Inspection Manual Chapter 2800. Described in Section 4.4 of the Application to Become an NRC Agreement State.	1 and 16.	Criteria Policy Statement; MD 5.6; SA-102; IMC 2800; IMC 2801.
4.4.3	Inspections Administrative Procedures	RMPP 2.1 <i>Scheduling of Inspections</i> , RMPP 2.2 <i>Inspection Preparations</i> , RMPP 2.3 <i>Performance-Based Inspections</i> , RMPP 2.4 <i>Documentation of Inspection Results</i> , and RMPP 2.7 <i>Assuring the Technical Quality of Inspections</i> and RMPP 4.2 <i>Tracking Inspections</i> . The Department is incorporating by reference specific	1.	Criteria Policy Statement; IMC 2800; IMC 2801.

		inspection procedures and guidance of the NRC including Inspection Manual Chapter 2800. Described in Section 4.4 of the Application to Become an NRC Agreement State.		
4.5	Enforcement Program			
4.5.1	Routine Enforcement Procedures	RMPP 2.5 <i>Enforcement, Escalated Enforcement and Administrative Actions</i> . Described in Section 4.5 of the Application to Become an NRC Agreement State.	18, 19, and 23.	Criteria Policy Statement; NRC Enforcement Policy; IMC 2800; IMC 2801.
4.5.2	Escalated Enforcement Procedures	RMPP 2.5 <i>Enforcement, Escalated Enforcement and Administrative Actions</i> . Described in Section 4.5 of the Application to Become an NRC Agreement State.	18, 19, and 23.	Criteria Policy Statement; NRC Enforcement Policy; IMC 2800; IMC 2801.
4.6	Technical Staff			
4.6.1	Technical Staff Organization	RMPP 5.1 <i>Qualifications and Training</i> . Described in Section 4.6 of the Application to Become an NRC Agreement State.	20 and 34.	Criteria Policy Statement; MD 5.6; SA-103
4.6.2	Formal Qualification Plan	RMPP 5.1 <i>Qualifications and Training</i> . Described in Section 4.6 of the Application to Become an NRC Agreement State.	2, 20, and 34.	Criteria Policy Statement; MD 5.6; IMC 1248; NRC/OAS Training Work Group "Recommendations for Agreement

				State Training Programs”.
4.6.3	Current Technical Staff Qualifications	Described in Section 4.6 of the Application to Become an NRC Agreement State. Staff resumes are in Appendix L and staff Qualification Journals, Course Completion Certificates and Qualification Letter for Time of the Agreement are in Appendix M.	20 and 34.	Criteria Policy Statement; MD 5.6; IMC 1248.
4.7	Event & Allegation			
4.7.1	Event & Allegation Response Procedures	RMPP 3.1, <i>Management of Allegations</i> , RMPP 3.2 <i>Incident Response</i> RMPP 3.3 <i>Scrap Yard Incident Response</i> . Described in Section 4.7.1 of the Application to Become an NRC Agreement State.	1 and 11.	Criteria Policy Statement; MD 5.6; MD 8.8; IMC 1301; IMC 1302; IMC 1303; IMC 1330; SA-105; SA-300; SA-400.
4.7.2	Event Reporting Procedures	RMPP 3.4 <i>Nuclear Materials Event Database (NMED) Input</i> . Described in Section 4.7.2 of the Application to Become an NRC Agreement State.	1 and 11.	Criteria Policy Statement; SA-300.

4.1.3 *Content of the Proposed Agreement*

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4.1.3 Content of the Proposed Agreement

Vermont is applying for a limited Agreement transferring to the State the authority to regulate byproduct materials as defined in section 11e.(1) of the Atomic Energy Act (AEA); byproduct materials as defined in section 11e.(3) of the AEA; byproduct materials as defined in section 11e.(4) of the AEA; source materials; and special nuclear materials, in quantities not sufficient to form a critical mass. The proposed Agreement follows below, and is formatted in accordance with, and with the content from, the Exhibit in NRC Management Directive 5.8.

Vermont is not applying for an Agreement transferring to the State authority to regulate byproduct materials as defined in section 11e.(2) of the AEA; for the regulation of the land disposal of byproduct, source, or special nuclear waste received from other persons; or for the evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided in the regulations or orders of the Commission.

The State of Vermont is requesting regulatory authority for Section 11e.(1) of the AEA.

~~The Atomic Energy Act, as revised in 1978 and in 2005 by the Energy Policy Act (EPAAct), defines byproduct material in Section 11e.(1) as including~~ Byproduct material as defined in section 11e.(1) of the AEA includes “any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or ~~using~~ utilizing special nuclear material.”

The State of Vermont is requesting regulatory authority for Section 11e.(3) of the AEA.

Byproduct materials as defined in section 11e.(3) of the AEA ~~is includes~~ “any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or...-any material that (i) has been made radioactive by use of a particle accelerator; and (ii) is produced, extracted, or converted after extraction, before, on, or after the date of enactment of [the EPAAct] for use for a commercial, medical, or research activity.”

The State of Vermont is requesting regulatory authority for Section 11e.(4) of the AEA.

~~The definition in~~ Section 11e.(4) ~~provides that the term “byproduct material” includes is~~ “any discrete source of naturally occurring radioactive material, other than source material, that – (A) the Commission, in consultation with the Administrator of the Environmental Protection Agency (EPA), the Secretary of the Department of Energy (~~DOE~~), the Secretary of the Department of Homeland Security (~~DHS~~), and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and (B) ~~is before, on, or after August 8, 2005 is extracted or converted after extraction for use in a commercial, medical, or research activity.”~~ extracted or converted after extraction before, on, or after the date of enactment of the EPAAct for use in a commercial, medical, or research activity.”

The State of Vermont is requesting regulatory authority for source materials and special nuclear materials, in quantities not sufficient to form a critical mass.

AN AGREEMENT
BETWEEN
THE UNITED STATES NUCLEAR REGULATORY COMMISSION
AND
THE STATE OF VERMONT
FOR THE
DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY
AND
RESPONSIBILITY WITHIN THE STATE OF VERMONT PURSUANT TO
SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq. (hereinafter referred to as the Act), to enter into an agreement with the Governor of the State of Vermont (hereinafter referred to as the State) -providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(4) of the Act, source material, and special nuclear material in quantities not sufficient to form a critical mass; and

WHEREAS, The Governor of the State is authorized under 18 V.S.A. § 1653 to enter into this Agreement with the Commission; and

WHEREAS, The Governor of the State of Vermont certified on [DATE] that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on [DATE] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and

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

WHEREAS, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and

WHEREAS, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

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

ARTICLE I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State of Vermont under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

- A. Byproduct material as defined in Section 11e.(1) of the Act;
- B. Byproduct material as defined in Section 11e.(3) of the Act;
- C. Byproduct material as defined in Section 11e.(4) of the Act;
- D. Source material;
- E. Special nuclear material, in quantities not sufficient to form a critical mass.

ARTICLE II

This Agreement does not provide for discontinuance of any authority, and the Commission shall retain authority and responsibility with respect to:

- 1. The regulation of the construction, operation, and decommissioning of any production or utilization facility or any uranium enrichment facility;
- 2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or any production or utilization facility;
- 3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in the regulations or orders of the Commission;
- 4. The regulation of the disposal of such other byproduct material as the Commission from time to time determines by regulation or order should, because of the hazards thereof, not to be disposed without a license from the Commission;
- 5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
- 6. The regulation of activities not exempt from Commission regulation as stated in 10 CFR Part 150;
- 7. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material;
- 8. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

ARTICLE III

With the exception of those activities identified in Article II, paragraphs one through four [and six](#), this Agreement may be amended, upon application by the State and approval by the

Commission, to include the additional areas specified in Article II, paragraphs five, seven, and eight, whereby the State can exert regulatory authority and responsibility with respect to those activities and materials.

ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

ARTICLE V

This Agreement shall not affect the authority of the Commission under Section 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

ARTICLE VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulation, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and the licensee performance that may have generic implication or otherwise be of regulatory interest.

ARTICLE VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed on Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of Vermont, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act, if

the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State ~~of Vermont~~ has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act, which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE IX

This Agreement shall become effective on [date] and shall remain in effect unless and until such time as it is terminated pursuant to Article VII.

Done at Rockville, Maryland this [date] day of [month], [year].

FOR THE UNITED STATES NUCLEAR
REGULATORY COMMISSION

, Chairman

Done at Montpelier, Vermont this [date] day of [month], [year].

FOR THE STATE OF VERMONT

, Governor

4.2 Regulatory Requirements Program **Elements**

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4.2 Regulatory Requirements Program Elements

A State may adopt regulatory requirements in a State specific format or adopt the NRC regulations by reference. Alternatively, the State may use the Suggested State Regulations (SSR), published by the Conference of Radiation Control Program Directors, as a model for its regulations.

The State of Vermont is incorporating the required and relevant Parts of the Code of Federal Regulations (CFR) by reference to avoid incompatibility with US NRC regulations as much as possible. The Radiological Health Rule refers to the Parts Incorporated by Reference, and the exceptions to incorporation. A complete copy of the Radiological Health Rule is attached as Appendix G. Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 70, 71, 150.1, 150.2, 150.3, 150.11, 150.20, 170, and 171 of the CFR are incorporated by reference with the exception of those sections reserved to the NRC.

By incorporating these Parts of the CFR by reference, the State of Vermont will remain compatible in Compatibility Categories A, B, and C, as well as all program elements identified as having a health and safety role.

Vermont's Standards for Protection Against Radiation are based on those of 10 CFR [Part 20](#), including the dose limits for occupationally exposed persons and members of the public; limits on the concentration and quantity of materials released to the environment; and technical definitions and terminology, units of radioactivity and radiation dose, radiation symbols, labels, and warning signs.

Vermont has adopted those regulatory requirements designated by the NRC with significant transboundary implications. These provide the requirements that affect the movement of materials across State borders, provide certain other regulations, such as the concentrations of materials where the end user is exempt from licensing, and other requirements where a consistent nationwide approach is necessary.

By incorporating Parts of the CFR by reference, Vermont's regulations will provide what is needed for an orderly pattern of regulation, avoiding conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis and will not result in undesirable consequences.

Vermont's regulations cover all categories of material being requested under the Agreement, and do not claim any intent to regulate materials or activities over which the NRC retains jurisdiction.

Commented [IW43]: NRC Comment 25.

4.2.1 *Standards for Protection Against Radiation*

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4.2.1 *Standards for Protection Against Radiation*

The State should submit its regulations, or generic legally binding requirements, that prescribe the standards for protection against radiation. The State should submit its regulations or generic legally binding requirements for all categories of material being requested under the Agreement.

Vermont has adopted those NRC requirements designated as Compatibility Category A as defined in the Handbook to Management Directive 5.9. The NRC program elements in Category A are those that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. The program elements adopted by the State of Vermont are identical to those of the NRC and provide uniformity in the regulation of agreement material. This is because the State is incorporating by reference Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 70, 71, 150.1, 150.2, 150.3, 150.11, 150.20, 170, and 171 of the Code of Federal Regulations (CFR), except for those sections exclusively reserved for the NRC.

The State of Vermont has incorporated by reference, the applicable sections of 10 CFR 20, regarding Standards for Protection Against Radiation. Whenever the NRC's rules change, the Department's rules will also change accordingly. The Department has additional regulatory language related to standards for protection against radiation and applicable to Compatibility Category A. They are described in Chapter 6, Subchapter 5.0, Radiological Health Rule, Section 6.0 Standards for Protection Against Radiation. The Radiological Health Rule is attached as Appendix G, the citation for the rule is CVR 13-140-030 and it may be accessed at: http://www.healthvermont.gov/sites/default/files/documents/2016/12/REG_radiological-health.pdf.

Commented [IW44]: NRC Comment 26.

Commented [JS45]: If category A why does the Department have "additional regulatory language"?

4.2.2 *Regulatory Requirements with Significant Transboundary Implications*

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4.2.2 *Regulatory Requirements with Significant Transboundary Implications*

The State should submit its regulations, or generic legally binding requirements, that prescribe the regulatory requirements with significant transboundary implications. The State should submit its regulations or generic legally binding requirements for all categories of material being requested under the Agreement.

Vermont has adopted those regulatory requirements that satisfy the criteria for Compatibility Category B as defined in the Handbook to Management Directive 5.9. The NRC program elements in Category B are those that apply to activities that have direct and significant transboundary implications. The program elements adopted by the State of Vermont are identical to those of the NRC and provide uniformity in the regulation of agreement material. The Rule in its entirety is attached as Appendix G, and it may be accessed here:

http://www.healthvermont.gov/sites/default/files/documents/2016/12/REG_radiological-health.pdf.

Commented [WD46]: Vermont needs to include a portion of Part 61 in their proposed regulations. Although most of Part 61 addresses LLW disposal (which the State has not requested), there are four sections in Part 61 that address definitions, waste classification, characteristics and labeling that apply to any licensee that needs to package and ship LLW to a Part 61 facility. The following sections of Part 61 need to be added:

61.2: Definitions of *disposal* (compatibility category C), *hazardous waste* (category C), and *waste* (category B)
61.55: Waste classification, (category B)
61.56: Waste characteristics, category H&S
61.57: Labeling, category H&S

Commented [IW47]: NRC Comment 27.

4.2.3 *Regulatory Requirements Needed for an
Orderly Pattern of Regulation*

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4.2.3 Regulatory Requirements Needed for an Orderly Pattern of Regulation

The regulatory requirements needed for an orderly pattern of regulation are regulations that an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis, and that, if not adopted, would result in undesirable consequences.

Vermont has adopted those regulatory requirements that satisfy the criteria for Compatibility Category C as defined in the Handbook to Management Directive 5.9. The NRC program elements in Category C are those that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. The program elements adopted by the State of Vermont are identical to those of the NRC and provide uniformity in the regulation of agreement material. This is because the State is incorporating by reference Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61, 70, 71, 150.1, 150.2, 150.3, 150.11, 150.20, 170, and 171 of the Code of Federal Regulations (CFR), except for those sections exclusively reserved for the NRC.

Commented [IW48]: NRC Comment 28.

Commented [WD49]: See comment above in Section 4.2.2

The State of Vermont is incorporating the required parts of 10 CFR by reference to eliminate the possibility of duplications, gaps, or other conflicts in regulation, including duplications, gaps, or conflicts between the State and the NRC, State agencies, or State and local agencies.

Relative to activities reserved to NRC regulations, 18 VSA § 1653(c) states that “this section does not confer authority to regulate materials or activities reserved to the NRC under 42 U.S.C. § 2021(c) and 10 CFR Part 150.” Similarly, duplications, gaps, and conflicts are minimized reduced through 18 VSA § 1652(d):

“The Department shall advise, consult, and cooperate with other agencies of the State, the federal government, other states and interstate agencies, political subdivisions, industries, and with groups concerned with control of sources of ionizing and nonionizing radiation.”

The State of Vermont, in requesting an Agreement to regulate byproduct, and/or source material, and special nuclear material in quantities not sufficient to form a critical mass, as provided in the Atomic Energy Act, as amended, shall not have jurisdiction over areas under NRC jurisdiction on the date that the Agreement becomes effective. An orderly pattern of regulation ensures a transfer of regulatory authority to the State of Vermont from the Nuclear Regulatory Commission, on the date the Agreement becomes effective. Such is stated This is reflected in numerous subsections of Sections I and II of the Radiological Health Rule which can be found in its entirety is attached as Appendix G, and it may be accessed here: http://www.healthvermont.gov/sites/default/files/documents/2016/12/REG_radiological-health.pdf.

4.2.4 ***Regulatory Requirements that have a Particular Health and Safety Significance***

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Commented [DB50]: Need to add border to this page.

4.2.4 *Regulatory Requirements that have a Particular Health and Safety Significance*

The State should submit its regulations or generic legally binding requirements that apply the essential objectives of the NRC regulations designated as H&S [health and safety]. The State should submit its regulations or generic legally binding requirements for all categories of material requested under the Agreement.

Vermont has adopted those regulations that satisfy the criteria for the health and safety category as defined in the Handbook to Management Directive 5.9. These are NRC program elements that are not required for compatibility (i.e., Category D), but that have been identified as having a health and safety role (i.e., adequacy) in the regulation of agreement material within the State. Failures could lead to an exposure to an individual in excess of the basic radiation protection standards in Category A if its essential objectives were not adopted.

Although not required for compatibility, the State adopts program elements in this category, based on those of NRC, because of particular health and safety considerations. The State of Vermont incorporates health and safety elements that are identical to those of the NRC because the State is incorporating by reference Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61, 70, 71, 150.1, 150.2, 150.3, 150.11, 150.20, 170, and 171 of the Code of Federal Regulations (CFR), except for those sections exclusively reserved for the NRC. Incorporation is found in the Radiological Health Rule. The Rule in its entirety is attached as Appendix G, and it may be accessed here:

http://www.healthvermont.gov/sites/default/files/documents/2016/12/REG_radiological-health.pdf.

Commented [IW51]: NRC Comment 29.

Commented [WD52]: See comment above in Section 4.2.2