

NUCLEAR REGULATORY COMMISSION

10 CFR Part 150

[NRC-2018-0104]

**State of Wyoming: Discontinuance of Certain Commission Regulatory Authority
Within the State; Notice of Agreement Between the NRC and the State of Wyoming**

AGENCY: Nuclear Regulatory Commission.

ACTION: Final state agreement.

SUMMARY: This notice is announcing that on September 25, 2018, Kristine L. Svinicki, Chairman of the U.S. Nuclear Regulatory Commission (NRC or Commission), and Governor Matthew H. Mead of the State of Wyoming, signed an Agreement as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (the Act). Under the Agreement the Commission discontinues its regulatory authority, and the State of Wyoming assumes regulatory authority over the management and disposal of byproduct material as defined in Section 11e.(2) of the Act and a subcategory of source material or ores involved in extraction or concentration of uranium or thorium milling in the State. As of the effective date of the Agreement, a person in Wyoming possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the *Federal Register (FR)* and are codified in the Commission's regulations. The Agreement is published here as required by Section 274e. of the Act.

DATES: The effective date of the Agreement is September 30, 2018.

ADDRESSES: Please refer to Docket ID **NRC-2018-0104** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2018-0104**. Address questions about dockets in Regulations.gov to Jennifer Borges; telephone: 301-287-9127; e-mail: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Document collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[Begin Web-based ADAMS Search](#)". For problems with ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS Accession numbers for the request for an Agreement by the Governor of Wyoming, including all information and documentation submitted in support of the request, and the NRC staff assessment are: ML16300A294, ML17319A921, ML18094B074, and ML18192B111 (includes final staff assessment).

- **NRC's Public Document Room (PDR):** The public may examine and purchase copies of public documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Stephen Poy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-7135; e-mail: Stephen.Poy@nrc.gov.

SUPPLEMENTARY INFORMATION: The NRC published the proposed Agreement in the *Federal Register* for comment once each week for 4 consecutive weeks on June 26, 2018 (83 FR 29828), July 3, 2018 (83 FR 31174), July 10, 2018 (83 FR 31981), and July 17, 2018 (83 FR 33257), as required by the Act. The comment period ended on July 26, 2018. The Commission received 11 comment letters and responses—two supporting the Agreement, three opposing the Agreement, and the remaining not stating an opinion or providing statements related to the proposed Agreement. The comments did not alter the NRC staff's finding that the Wyoming Agreement State program is adequate to protect public health and safety and compatible with the NRC's program. The Wyoming Agreement is consistent with Commission policy and thus meets the criteria for an Agreement with the Commission.

After considering the request for an Agreement by the Governor of Wyoming, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Wyoming Department of Environmental Quality, the NRC staff completed an assessment of the Wyoming program. The agency made a copy of the staff assessment available in the NRC's Public Document Room (PDR) and electronically on the NRC's Web site. Based on the staff's assessment, the Commission determined on September 10, 2018, that the Wyoming program for control of radiation hazards is adequate to protect public health and safety and compatible with the Commission's program. This Agreement is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has

not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 25th day of September, 2018.

For the Nuclear Regulatory Commission.

A handwritten signature in black ink, reading "Annette Vietti-Cook". The signature is fluid and cursive, with the first name "Annette" and last name "Vietti-Cook" clearly distinguishable.

Annette L. Vietti-Cook,
Secretary of the Commission.

ATTACHMENT

AN AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE STATE OF WYOMING FOR THE DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE 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. Section 2011 et seq. (hereinafter referred to as "the Act"), to enter into agreements with the Governor of any 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 material as defined in Section 11e.(2) of the Act and source material involved in the extraction or concentration of uranium or thorium in source material or ores at milling facilities; and,

WHEREAS, The Governor of the State of Wyoming is authorized under Wyoming Statute Section 35-11-2001 to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State of Wyoming certified on November 14, 2017, that the State of Wyoming (hereinafter referred to as "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 September 10, 2018, 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 assuring 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 Act;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State of Wyoming 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 under Chapters, 7, and 8, and Section 161 of the Act with respect to the following materials:

- A. Byproduct material as defined in Section 11e.(2) of the Act; and,
- B. Source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (hereinafter referred to as "source material associated with milling activities").

ARTICLE II

- A. This Agreement does not provide for the discontinuance of any authority, and the Commission shall retain authority and responsibility, with respect to:
 - 1. Byproduct material as defined in Section 11e.(1) of the Act;
 - 2. Byproduct material as defined in Section 11e.(3) of the Act;
 - 3. Byproduct material as defined in Section 11e.(4) of the Act;
 - 4. Source material except for source material as defined in Article I.B. of this Agreement;
 - 5. Special nuclear material;
 - 6. The regulation of the land disposal of byproduct, source, or special nuclear material received from other persons, excluding 11e.(2) byproduct material or source material described in Article I.A. and B. of this Agreement;
 - 7. 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;
 - 8. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
 - 9. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
 - 10. 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;
 - 11. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not to be so disposed without a license from the Commission;

12. The regulation of activities not exempt from Commission regulation as stated in 10 CFR Part 150;
 13. The regulation of laboratory facilities that are not located at facilities licensed under the authority relinquished under Article I.A. and B. of this Agreement; and,
 14. Notwithstanding this Agreement, the Commission shall retain regulatory authority over the American Nuclear Corporation license (License No. SUA-667; Docket No. 040-04492).
- B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:
1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.
 2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as its disposal site for such material. Such reserved authority includes:
 - a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission and with ownership requirements for such material and its disposal site;
 - b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);
 - d. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;
 - e. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and

- interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State;
- f. The authority to require the Secretary of the United States Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety and other actions as the Commission deems necessary; and,
 - g. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.
3. The Commission retains the authority to reject any State request to terminate a license that proposes to bifurcate the ownership of 11e.(2) byproduct material and its disposal site between the State and the Federal government. Upon passage of a revised Wyoming Statute Section 35-11-2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of this Agreement.

ARTICLE III

With the exception of those activities identified in Article II, A.8 through A.11, this Agreement may be amended, upon application by the State and approval by the Commission to include one or more of the additional activities specified in Article II, A.1 through A.7, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

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 for licensing issued by the Commission.

ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 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 regulations 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 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 in 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

- A. The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State or upon request of the Governor of the State, 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 has not complied with one or more of the requirements of Section 274 of the Act.
 - 1. This Agreement will terminate without further NRC action if the State does not amend Wyoming Statute Section 35-11-2004(c) to be compatible with Section 83b.(1)(A) of the Act by the end of the 2019 Wyoming legislative session. Upon passage of a revised Wyoming Statute Section 35-11-2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of the Agreement.
- B. 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

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity that results in production of such material, the State shall comply with the provisions of Section 274o. of the Act, if in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material.

- A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity that results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,
- B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

ARTICLE X

This Agreement shall become effective on September 30, 2018, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Cheyenne, Wyoming, in triplicate, this 25th day of September, 2018.

FOR THE UNITED STATES
NUCLEAR REGULATORY COMMISSION.

/RA/

Kristine L. Svinicki, Chairman

FOR THE STATE OF WYOMING.

/RA/

Matthew H. Mead, Governor