

NUCLEAR REGULATORY COMMISSION

Illinois: Discontinuance of Certain Regulatory Authority and Responsibility
Within the State

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Agreement with the State of Illinois.

SUMMARY: Notice is hereby given that on May 14, 1987, Lando W. Zech, Jr., Chairman of the Nuclear Regulatory Commission, and on May 18, 1978, James R. Thompson, Governor of the State of Illinois, signed the Agreement set forth below for the discontinuance by the Commission and assumption by the State of certain Commission regulatory authority. The Agreement was published in accordance with the requirements of Public Law 86-373 (Section 274 of the Atomic Energy Act of 1954, as amended). The exemptions from the Commission's licensing authority have been published in the Federal Register and codified as Part 150 of the Commission's regulations in title 10 of the Code of Federal Regulation.

On May 13, 1987, the Commission with Chairman Zech and Commissioners Asselstine, Bernthal and Carr agreeing, approved the Agreement between the State of Illinois and the NRC pursuant to section 274b of the Atomic Energy Act, as amended.

Commissioner Bernthal approved the Agreement between the State of Illinois and the Commission. In his judgment, however, all materials and contaminated areas which have resulted from operations of the West Chicago Rare Earths Facility would more properly be classified as "byproduct material" under section 11e.(2) of the Atomic Energy Act. As such,

Commissioner Bernthal believes that jurisdiction for these materials and contaminated areas should remain with the Commission until such time as the State of Illinois elects to seek authority for *all* byproduct material.

In addition, the Commission, with Chairman Zech and Commissioners Bernthal and Carr agreeing, approved an Order to Allied-Chemical, Placing its uranium conversion plant under continued NRC regulatory authority based on common defense and security considerations. Commissioner Asselstine disapproved the order.

Commissioner Roberts did not participate in these actions.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION

On December 31, 1987, the Nuclear Regulatory Commission initially published for public comment a proposed agreement with the State of Illinois for discontinuance by the Commission and assumption by the State of certain regulatory authority and the staff's assessment of the proposed Illinois program for regulation of radioactive materials covered by the proposed agreement.

As required by Section 274 of the Atomic Energy Act, the proposed Agreement and the staffs' assessment of the State's proposed radiation control program were to be published in the **Federal Register** once a week for four consecutive weeks. Interested persons were invited to submit comments by January 30, 1987. The 2nd publication was made on January 7, 1987. The December 31st and January 7th publications were determined to have been

the subject of **Federal Register** printing errors. As a result, they were incomplete and also contained errors. A corrected notice was published January 21, 1987 at 52 FR 2309. Since the initial notice was incomplete and also contained significant errors, the 4 consecutive week publication cycle required by the Act was restarted beginning with the January 21, 1987 notice. A revision of the date for public comments was also published at the time (52 FR 2309) changing it to February 20, 1987. The 2nd consecutive weekly notice was published January 28, 1987, at 52 FR 2898. The 3rd consecutive weekly notice was published February 4, 1987 at 52 FR 3503 but printing errors again occurred, this time resulting in the omission of text. A correction notice for this omission was published February 12, 1987 at 52 FR 4589. The 4th consecutive weekly notice was published February 11, 1987 at 52 FR 4438.

The proposed agreement would have included the Allied Chemical plant which is one of plants in the United States licensed to convert uranium "yellowcake" to UF. (The other plant is Kerr-McGee's Sequoyah plant in Oklahoma). The Commission, in its **Federal Register** notices, noted that it was considering whether continued NRC regulation of the Allied Chemical Plant is necessary in the interest of the common defense and security of the United States. The Allied Chemical plant was identified by DOE as having a potential common defense and security significance. Section 274m of the Atomic Energy Act, as amended, provides that:

No agreement entered into under subsection b...shall affect the authority of the Commission under subsection 161b. or i to issue rules, regulations, or orders to protect the common defense and security...

The Commission has decided to retain regulatory authority over licensees subject to section 274b Agreements which have common defense and security significance. An order to effectuate this policy with respect to the Allied Chemical license has been issued and is published below. The order became effective May 14, 1987.

Public comments: Five written comments on the proposed Agreement and NRC staff assessment were received prior to the end of the comment period on February 20, 1987. Three comment letters were submitted by Conner and Wetterhahn, P.C., counsel for US Ecology which holds the license for the Sheffield low-level waste disposal site. One comment letter was received from A. Eugene Rennels, the Mayor of the City of West Chicago. One comment letter was received from Covington and Burling, counsel representing Kerr-McGee which holds a license for the Kerr-McGee West Chicago Rare Earths Facility where thorium processing and recovery operations were conducted under an AEC/NRC license. These comments were fully considered by the Commission in its deliberations on the Illinois request. Summaries of the comments and the staffs responses are available in the Commission's public document room at 1717 H Street, NW., Washington, DC and the Commission's Region III Office, 799 Roosevelt Road, Building No. 4, Glen Ellyn, Illinois.

Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant In 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 (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 materials as defined in sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1985, ch.111 1/2, par, 216b and ch. 111 1/2, par 242-19, to enter into this Agreement with the Commission; and,

Whereas, the Governor of the State of Illinois certified on October 2, 1986, that the State of Illinois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the 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 an May 13, 1987 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 the, 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 reciprocal recognition of licenses and 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 the State, acting in 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 6, 7, and 8, and section 161 of the Act with respect to the following:

- A. Byproduct material as defined in section 161.(1) of the Act;
- B. Source material;
- C. Special nuclear materials in quantities not sufficient to form a critical mass; and
- D. The land disposal of source, byproduct and special nuclear material received from other persons.

Article II

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

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source or special nuclear waste materials as defined in regulations or orders of the Commission;

D. 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 be so disposed of without a license from the Commission and;

E. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct.

Article III

This Agreement may be amended, upon completion by the State and approval by the Commission, to include the additional area discussed in Article II, paragraph E, whereby the State can exert regulatory control over the materials stated therein.

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 Commissioner.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. 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 use its best efforts to 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 State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts 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 like materials. The State and the Commission will use their best efforts to keep each other informed of

proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistants of the other party thereon.

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 Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations and procedure, by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the States 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 the public health and safety, or (2) the State 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 this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act.

Article IX

This Agreement shall become effective on June 1, 1987, and shall remain in effect unless and until such time as it is terminated pursuant to Article VII.

Done at Washington, DC, in triplicate this 14th day of May, 1987.

For the United States Nuclear Regulatory Commission.

Lando W. Zech, Jr,

Chairman.

Done at Springfield Illinois, in triplicate, this 18th day of May, 1987.

For the State of Illinois.

James R Thompson,

Governor.

Order To Protect the Common Defense and Security

I

Allied-Chemical Corporation, Metropolis, Illinois, (the "licensee") is the holder of License No. SUB-526 (the "licensee") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorize, the licensee to use source material in a UP₅ conversion plant in Metropolis, Illinois. The license was last issued on May 28, 1985 and will expire on June 1, 1980 (Docket No.0400-3392).

II

In a letter dated October 2, 1986, Governor James P. Thompson of the State of Illinois requested that the Commission enter into an Agreement with the State of Illinois requested that the Commission enter into an Agreement with the State pursuant to section 274 of the Atomic Energy Act, as amended. The specific authority requested includes the category, source material. An

NRC staff assessment and the proposed agreement were published in the Federal Register for public comment (52 FR 2309, 2988, 3503, and 4436; correction notice at 52 FR 4569). The staff assessment noted that with respect to the Allied Chemical plant, the Commission was considering whether continued NRC regulation was necessary in the interest of the common defense and security of the United States:

III

In a letter dated November 17, 1986, the Department of Energy, ("DOE") commenting to NRC on the matter of the proposed inclusion of the NRC license to Allied Chemical among the category of source material licenses to be transferred to Illinois under a section 274b Agreement, stated that the combination of the commercially operated uranium conversion facilities in the U.S. and the DOE operated enrichment facilities represent a complex that is an important national asset essential to maintaining the common defense and security of the United States. DOE further expressed the view that, "it would be prudent for NRC to retain its existing regulatory authority over uranium conversion facilities consistent with its charter to regulate facilities whose operation is in the national interest."

IV

Upon consideration of these facts, the Commission has determined that regulation of the Allied-Chemical conversion plant in Metropolis should be continued under NRC jurisdiction, to protect the common defense and security.

V

In view of the foregoing and pursuant to sections 161b and 274m of the Atomic Energy Act, as amended, 42 U.S.C. 2201(b), 2021(m). It is hereby ordered effective immediately, that:

a. Notwithstanding the provisions of a section 274b Agreement with the State of Illinois as approved by the Commission the NRC jurisdiction over the possession and use of source material by Allied Chemical (license SUB-526) shall be retained by the NRC, and

b. NRC jurisdiction over the license shall remain in effect during the term of such section 274b Agreement unless the Commission shall determine that continued regulation by NRC is no longer needed to assure the protection of the common defense and security of the United States.

Any person whose interest may be adversely affected by this order may within 30 days of the date of this order file written comments with supporting analysis with the Secretary of the Commission explaining why this order should not have been issued. The Commission will consider any comments that are filed with a view to possible modification or rescission of the order. The filing of any comments does not stay the effectiveness of this order.

Commissioner Asselstine disapproved this Order.

Dated at Washington, DC this 14th day of May, 1987.

For the United States Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary, Office of the Secretary of the Commission.

Dated at Washington, DC this 9th day of June, 1987.

For the United States Nuclear Regulatory Commission.

Harold R Denton,

Director, Office of Governmental and Public Affairs.

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