



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

August 24, 2000

OFFICE OF THE
SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-00-0166

TITLE: SECTION 274b AGREEMENT WITH THE STATE OF
 OKLAHOMA

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 24, 2000.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Meserve
 Commissioner Dicus
 Commissioner Diaz
 Commissioner McGaffigan
 Commissioner Merrifield
 OGC
 EDO
 PDR

SECY NOTE: TO BE MADE PUBLICLY AVAILABLE 5 BUSINESS DAYS AFTER THE
LETTER TO GOVERNOR KEATING IS DISPATCHED.

VOTING SUMMARY - SECY-00-0166

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	8/17/00
COMR. DICUS	X					8/9/00
COMR. DIAZ	X					8/14/00
COMR. McGAFFIGAN	X				X	8/7/00
COMR. MERRIFIELD	X				X	8/11/00

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on August 24, 2000.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook
Secretary of the Commission

FROM: CHAIRMAN MESERVE

SUBJECT: SECY-00-0166 - SECTION 274b AGREEMENT WITH THE
STATE OF OKLAHOMA

Approved XX with comments Disapproved _____ Abstain _____

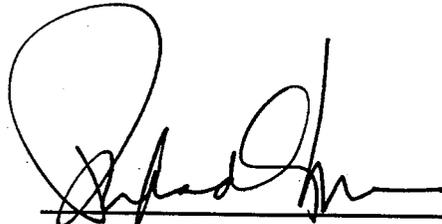
Not Participating _____ Request Discussion _____

COMMENTS:

I approve the proposed Agreement, subject to 1) the edits of the proposed Agreement and of the Federal Register notice suggested by Com. McGaffigan in his vote (with one slight amendment) and 2) the additional attached edits of the Agreement, of the letter to Governor Keating, and of the final NRC staff assessment (Attachment 2 to the paper).

Attachments:

1. Amendment to Commissioner McGaffigan's edits.
2. Federal Register notice edits.
3. Governor Keating letter edits.
4. NRC staff assessment edit.



SIGNATURE

August 17, 2000

DATE

Entered on "STARS" Yes No

ADDRESSES: Copies of the staff assessment, and the Commission's decision may be viewed at the NRC website, <http://www.nrc.gov>.

FOR FURTHER INFORMATION CONTACT: Patricia M. Larkins, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-2309 or e-mail PML@NRC.GOV.

A copy of the staff assessment was made available in the NRC's Public Document Room and electronically on NRC's website.

SUPPLEMENTARY INFORMATION:

The draft Agreement was published in the Federal Register for comment once a week for four consecutive weeks (see, e.g., 65 FR 36169, June 7, 2000) as required by the Act. The public comment period ended on July 7, 2000, and the Commission did not receive any comments during that time. After considering the request for an Agreement by the Governor of Oklahoma, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Oklahoma Department of Health, Bureau of Radiological Health, the NRC staff completed an assessment of the Oklahoma program. Based on the staff's assessment, the Commission determined on _____, 2000, that the proposed

Oklahoma program for the control of radiation hazards is adequate to protect public health and safety, and that it is compatible with the Commission's program. Following execution of the Agreement, NRC staff will continue a program of active interaction with the new Agreement State program that includes the exchange of regulatory information (e.g., incident reports, policy changes, rule and guidance development), and periodic on-site reviews of the Agreement State program.

(note: the proposed language was taken from pg 4 of the SECY paper)

ORIGINAL REC'D
DATE REC'D - 8/11/00 11:00

X
✓

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 byproduct material^s 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.

The Honorable Frank Keating
Governor of Oklahoma
Oklahoma City, OK 73105

Dear Governor Keating:

I am pleased to inform you that the U. S. Nuclear Regulatory Commission (NRC) has approved your proposed Agreement under which the NRC will discontinue and the State of Oklahoma will assume regulatory authority over the acquisition, possession, use, transfer, and disposal of ^{Certain} byproduct material, limited quantities of source material (primarily used as shielding), special nuclear material in quantities not sufficient to form a critical mass, and disposal of low-level radioactive waste at a land disposal site.

Enclosed are three formal copies of the Agreement for your signature. After signature, one copy should be retained by your office, and the other two copies should be mailed to Paul H. Lohaus, Director, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

~~Thanking you in advance,~~ we are pleased with your continued interest in participating in the Agreement State Program and look forward to the continued excellent relationship we have enjoyed with the State of Oklahoma in the past.

Sincerely,

A.
Richard Meserve

Enclosure:
As stated

2. Assessment of Staff Qualifications

The NRC staff review considered the qualifications of the individuals currently on the DEQ professional/technical staff that would be involved in the agreement materials program, and the DEQ's procedures for training and qualifying new staff members.

Under the proposed Agreement, the Environmental Program Manager would direct the agreement materials program, and would be primarily involved with the program's administration. NRC staff estimates that about 35 percent of the manager's effort would be devoted to technical issues, with the remaining 30 percent devoted to managerial and supervisory activities. The Program manager holds a B.S. degree in Physics/ Political Science and an M.S. degree in Industrial Hygiene. He has been with the DEQ since 1990, and has been the Environmental Program Manager since 1994.

The Program manager will provide the immediate day-to-day supervision of the agreement materials program.

Based on the staff review, all non-supervisory staff members except one have at least a bachelor's degree or equivalent in life/physical sciences or engineering. One senior staff member has an undergraduate degree in the physical sciences, and the other has an undergraduate degree in accounting and an advanced degree in public health. One junior staff member has an associate's degree in chemistry and an undergraduate degree in environmental science, and the interim qualified junior staff member has a degree in education. The three remaining staff all have degrees in engineering, one of which also has an associate's degree in radiation protection technology.

Most staff members were hired from other environmental programs in DEQ with considerable experience in a variety of environmental program areas. The program staff has considerable experience in related regulatory program implementation including air pollution, hazardous waste, solid waste, sewage treatment, and water use issues. Of the seven full-time professional employees, the program manager and one senior technical staff have 10 years of regulatory experience with DEQ and six years respectively in the radioactive materials program (RAM), as well as several years of prior experience working with radioactive material, radiation protection, or hazardous waste. The second senior staff member has three years of industry experience and three years with the DEQ RAM program. One junior staff member has three years experience as a laboratory technician using radionuclides for labeling and two years with the DEQ RAM program and the other junior staff member has seven years experience with DEQ in the environmental area, and two years in the DEQ RAM program. Two other staff members, currently in training, have 17 and 3 years experience, primarily in the environmental regulatory area. One has completed one year with DEQ RAM, and has 16 years of related environmental regulatory experience including six years experience as a well logging engineer, and the other has 3.5 years of related nuclear power plant experience as a health physicist decontamination technician and tool coordinator. The additional part-time member of the staff, a registered professional engineer, has been with DEQ since 1958. He spent many years as director of the program, and will be available for consultation and advice as needed.

NOTATION VOTE

RESPONSE SHEET

200 AUG -3 PM 3:34

15

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER DICUS

SUBJECT: **SECY-00-0166 - SECTION 274b AGREEMENT WITH THE STATE OF OKLAHOMA**

Approved x ^{w/o comment} Disapproved Abstain

Not Participating

COMMENTS:

None.

Aneta Joy Dicus
SIGNATURE

August 9, 2000
DATE

Entered on "STARS" Yes x No

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER DIAZ
SUBJECT: **SECY-00-0166 - SECTION 274b AGREEMENT WITH THE STATE OF OKLAHOMA**

Approved *[initials]* Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: *None.*

[Handwritten Signature]

SIGNATURE

8-14-00

DATE

Entered on "STARS" Yes No _____

--REC'D BY NCB--

5 AUG 00 3:29

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-00-0166 - SECTION 274b AGREEMENT WITH THE STATE OF OKLAHOMA**

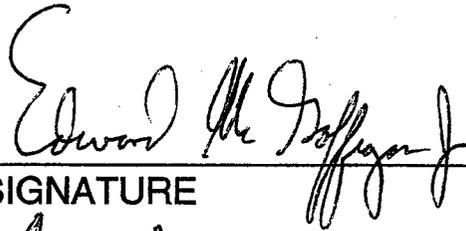
w/edits

Approved X Disapproved Abstain

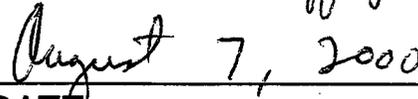
Not Participating

COMMENTS:

See attached edits.



SIGNATURE



DATE

Entered on "STARS" Yes X No

ATTACHMENT TO FEDERAL REGISTER NOTICE

***An Agreement Between the United States Nuclear Regulatory Commission
and the State of Oklahoma 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 (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 Oklahoma is authorized under Section 2-9-103(c) of the Radiation Management Act (27A O.S. Supp. 1998 § 2-9-101 et seq.) to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State of Oklahoma certified on December 28, 1999 that the State of Oklahoma (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the health and safety with respect to 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 to be determined) 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 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 Act of ~~1954, as amended;~~

NOW THEREFORE, It is hereby agreed between the Commission and the Governor of the State of Oklahoma, 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 materials:

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 byproduct material 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 such 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 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. The Commission may also, pursuant to Section 274j(2) of the Act, temporarily suspend all or part of this Agreement if, in the judgement 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.

U. S. NUCLEAR REGULATORY COMMISSION

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

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: Notice of Agreement between the NRC and the State of Oklahoma.

SUMMARY: This notice is announcing that on August __, 2000, Dr. Richard Meserve, Chairman of the U.S. Nuclear Regulatory Commission (NRC) and on August __, 2000, Governor Frank Keating of the State of Oklahoma signed an Agreement as authorized by Section 274b of the Atomic Energy Act of 1954, as amended (Act). The Agreement provides for the Commission to discontinue its regulatory authority over the possession and use of byproduct material as defined in Section 11e.(1) of the Act, special nuclear materials (in quantities not sufficient to form a critical mass), source material used to take advantage of its density and high mass properties where the use of the specifically licensed material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material (primarily used as shielding), and the disposal of low-level radioactive waste at a land disposal site in the State of Oklahoma, ^{and for Oklahoma to assume regulatory authority} ~~and for Oklahoma to assume the regulatory authority~~. Under the Agreement, a person in Oklahoma 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 as 10 CFR Part 150. The Agreement is published here as required by Section 274e of the Act.

ADDRESSES: Copies of the staff assessment, and the Commission's decision may be viewed at the NRC website, <http://www.nrc.gov>.

FOR FURTHER INFORMATION CONTACT: Patricia M. Larkins, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-2309 or e-mail PML@NRC.GOV.

A copy of the staff assessment was made available in the NRC's Public Document Room and electronically on NRC's website.

SUPPLEMENTARY INFORMATION:

The draft Agreement was published in the Federal Register for comment once a week for four consecutive weeks (see, e.g., 65 FR 36169, June 7, 2000) as required by the Act. The public comment period ended on July 7, 2000, and the Commission did not receive any comments during that time. After considering the request for an Agreement by the Governor of Oklahoma, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Oklahoma Department of Health, Bureau of Radiological Health, the NRC staff completed an assessment of the Oklahoma program. Based on the staff's assessment, the Commission determined on _____, 2000, that the proposed

X
Oklahoma program for the control of radiation hazards is adequate to protect public health and safety, and that it is compatible with the Commission's program. Following execution of the Agreement, NRC staff will continue a program of active interaction with the new Agreement State program that includes the exchange of regulatory information (e.g., incident reports, policy changes, rule and guidance development), and periodic on-site reviews of the Agreement State program.

(Note: the proposed language was taken from pg 4 of the SECY paper)

NOTATION VOTE

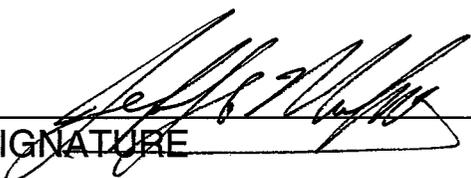
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-00-0166 - SECTION 274b AGREEMENT WITH THE STATE OF OKLAHOMA**

Approved Disapproved Abstain

Not Participating

COMMENTS: *See attached comments.*



SIGNATURE

8/11/00

DATE

Entered on "STARS" Yes No

Commissioner Merrifield's comments on SECY-00-0166:

I commend the staff for expeditiously completing the review of the request by the State of Oklahoma to become an Agreement State, and I approve the staff recommendations in SECY-00-0166. I note that the staff used a new streamlined procedure designed to improve the efficiency and effectiveness of the staff review for the proposed action. I highly encourage the staff to continue to look for methods to improve the efficiency and effectiveness of reviewing requests for future Agreement States. Oklahoma is the 32nd Agreement State, which means that the staff has had considerable experience in not only reviewing requests to become Agreement States but also reviewing the physical implementation of Agreement State programs. With this wealth of experience, staff should continuously search for ways to make this whole process more efficient and effective.

I note that the Oklahoma Agreement is somewhat unique in that Oklahoma does not assume regulatory authority over a category of facilities (about 4 to 5 facilities) that includes the more complex and controversial SDMP sites in the State. Although Oklahoma will become an Agreement State, the NRC will still devote a number of resources for facilities which are not explicitly excluded from the Agreement State program by the AEA (i.e., they are not power plants, fuel facilities, or Federal facilities, or they do not possess more than a critical amount of special nuclear material). I acknowledge that the exclusion of this category of facilities occurred with the specific approval of the Commission; and I am not criticizing the decision by Oklahoma to restrict its agreement. However, the SECY paper for the final agreement should have included a brief discussion of the NRC resource impact of this decision. Based on input from the staff, I have been informed that the total NRC resources for these 4-5 facilities will be approximately 3 FTE each year for the foreseeable future. In the annual budget review, the resource impact of a single Agreement out of 32 Agreements is not easily determined or presented; and I am not saying that the annual budget submitted to the Commission should go into such detail for a specific line item. However, in future staff papers on Agreements with States, a brief summary of the NRC resources anticipated to be devoted to facilities in that State, even with the Agreement in effect, should be provided.

As a further note, the continuing NRC obligation to address the needs of materials licensees in the State of Oklahoma underscores the complexities and interrelationships of the fee structure associated with our materials licensees. This decision only reiterates the need for a national materials program, irrespective of the number of Agreement States, and further validates the Commission's decision to address the inherent fairness and equity concerns in our fee structure by requesting limited funding from the general fund.

A handwritten signature in black ink, appearing to read "Jeffrey H. Wampler". The signature is fluid and cursive, with a long horizontal stroke at the end.