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March 2, 2001

VIA U.S. MAIL & UPS

Philip Ting, Chief
Fuel Cycle Licensing Branch, FCSS
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Honeywell International, Metropolis, Illinois (License SUB-526)
Illinois Department of Nuclear Safety Letter of February 16, 2001

Dear Mr. Ting:

We represent Honeywell International with respect to issues arising from the Illinois Department of Nuclear Safety's ("IDNS") efforts to reclassify certain materials at its uranium hexafluoride conversion facility at Metropolis, Illinois. (License SUB-526). Honeywell has asked us to submit this letter in response to the IDNS letter dated February 16, 2001 from its Director, Thomas Ortziger, to you. We respectfully disagree with the analysis and the conclusions in the IDNS letter and are writing this letter to give you the background of these issues and to provide you with an explanation of our position, which we believe is consistent with NRC's guidance in this area.

Background

The Metropolis facility receives its uranium ore concentrates or yellowcake in 55 gallon drums from mines throughout the world. It receives approximately 30,000 drums per year. Historically it stored those drums on wooden pallets. Empty drums were either free released or crushed and shipped out of state for disposal. The wooden pallets, which often contained some residues from the drums, were initially stored, use of the pallets was discontinued in 1995 to eliminate a radioactive waste stream and reduce costs, but it was recognized that the pallet pile presented a fire hazard and the pallets were then chipped. On November 10, 1999, in a letter from John J. Surmeier to Quivira Mining Company, the NRC made a determination that the wood chips from the pallets were properly considered Section 11e.(2) byproduct material. Pursuant to that determination, a copy of which is attached as Exhibit A, the Metropolis facility

CHICAGO CHARLOTTE COLOGNE HOUSTON LONDON LOS ANGELES NEW YORK PARIS WASHINGTON
INDEPENDENT MEXICO CITY CORRESPONDENT: JAUREGUI, NAVARRETE, NADER Y ROJAS

*NMSSD
public*

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has shipped such materials to Quivira for disposal. Some have been shipped to Waste Control Specialists of Texas for disposal as Section 40.13 material. All such shipments were properly manifested and handled.

We note that we understand that before its close the Kerr-McGee Sequoyah Fuels conversion plant had 11e.(2) status for its waste materials. The Quivira Mining Company received an authorization letter, Amendment No. 2, dated May 6, 1987, for empty drums contaminated with source materials from Sequoyah Fuels for disposal. (Exhibit B). After Sequoyah Fuels shut down, the NRC issued Amendment No. 34 to Quivira, dated December 7, 1995, to receive Allied Signal (Metropolis) crushed drums. (Exhibit C).

In a series of discussions with IDNS, it has become apparent that the state agency disagrees with the NRC determination as to 11e.(2) status with respect to Metropolis. The IDNS personnel have given various reasons for that disagreement, and our correspondence with them is attached as Exhibits D - G. Most recently, in a letter from Michael Klebe dated February 6, 2001, IDNS asserted that NRC has no jurisdiction over this material, and claimed instead that it is subject to IDNS jurisdiction exclusively under the Agreement State program.

Following receipt of the February 6, 2001 letter (Exhibit G), we met with IDNS on February 22, 2001 to explore these issues. At that time, IDNS provided us a copy of the February 16, 2001 letter. We address the issues of IDNS jurisdiction and its interpretation of Section 11e.(2) separately below.

Jurisdiction

Honeywell believes that jurisdiction over the Metropolis facility remains with NRC. Specifically, as set forth in this section, Honeywell believes that the Commission's decisions on Illinois' Agreement State status have generally and expressly excluded this facility from the state's authority.

NRC published notice of the original agreement for discontinuance of certain NRC regulatory authority in Illinois under Section 274 of the Atomic Energy Act ("AEA") on June 16, 1987. 52 FR 22864. (Exhibit H). At that time NRC authority was discontinued generally in Illinois as to Section 11e.(1) byproduct material, source materials, noncritical quantities of special nuclear materials and land disposal of materials received from others. Authority was not discontinued for 11e.(2) byproduct material. In addition, and as required by Section 274c of the AEA, NRC specifically retained authority for:

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

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- B. [Exports and imports]
- C. [Ocean disposal]
- 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.

The Commission further retained authority for: "The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material." 52 FR 22864, 22866.

The notice further included a specific order under subsection 161b and 274m of the AEA, which provided that as to Allied Chemical Corporation at Metropolis, now Honeywell, NRC regulation of the Metropolis conversion plant should be continued to protect the common defense and security. The Commission cited a Department of Energy ("DOE") comment on the proposed Illinois agreement, which recognized that uranium conversion and enrichment facilities as a complex constituted a vital national asset. DOE stated "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 stated 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." 52 FR 22864, 22866.^{1/} (Exhibit H).

The NRC thus determined in 1987 that "regulation of the Allied Chemical conversion plant in Metropolis should be continued under NRC jurisdiction to protect the common defense and security," and ordered that, despite the general transfer of source material authority to IDNS, the "NRC jurisdiction over the possession and use of source material by Allied Chemical (license SUB-526) shall be retained by the NRC." *Id.*^{2/}

^{1/} In addition to this specific exclusion, it is notable that the NRC has defined production facilities to include uranium enrichment facilities. 10 CFR § 150.3(h).

^{2/} While on occasion IDNS has relied on the argument that this national security exemption should be interpreted narrowly to exclude disposal of source material, in fact, no further exemption was necessary to retain NRC jurisdiction over all operations at Metropolis since Section 11e.(2) jurisdiction was not being transferred to the state at all. The Commission's own language is clear that it determined that "regulation of the [Metropolis plant] should be continued under NRC jurisdiction." No fine distinctions as to the degree of retention of authority were

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On November 5, 1990 NRC published notice of an amendment to the Section 274 agreement with the state of Illinois. 55 FR 46591. (Exhibit I). The Commission announced that the "Illinois program for regulation of 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material generally is compatible with the Commission's program for the regulation of like materials." NRC nevertheless noted the need for further review, including notice and opportunity for hearing, if the state should seek to apply its standards to a particular site:

However, certain standards adopted by Illinois differ from the standards adopted and enforced by the Commission for the same purpose. In accordance with the requirements of section 274o of the Atomic Energy Act, as amended, the Commission evaluated those differing standards in general, without reference to a particular site, and determined that those standards are adequate for purposes of amending the Commission's agreement with Illinois. If, at some time in the future, the State seeks to apply those or other differing standards to a particular site, including the West Chicago Rare Earths Facility site, section 274o requires the Commission to provide further notice and opportunity for a public hearing and to determine whether the State's differing standards will achieve a level of stabilization and containment of that site, and a level of protection for public health, safety and the environment from both radiological and nonradiological hazards associated with the site, which is equivalent to, or more stringent than, the level which would be achieved by any requirements adopted and enforced by the Commission for the same purpose. (emphasis supplied)

If Illinois' standards were to differ from those of NRC in the future, they were thus to be subject to further public notice and opportunity for hearing. The Commission's notice further stated that the Kerr-McGee Chemical Corporation was "the only licensee in the State affected by this amendment."

Significantly, all four Federal Register publications announcing consideration of the 1990 Amendment also made it clear that the only facility intended to be affected was the West Chicago

implied or can reasonably be inferred. In fact, with respect to operation of production or utilization facilities the Commission has made clear that "operation" includes the storage and handling of radioactive wastes. 10 CFR § 150.15.

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facility, and that the intended effect of the Amendment was to allow supervision of cleanup over certain offsite Kerr-McGee material which was classified under Section 11e.(2): "The State has no active uranium or thorium mills processing ore for its source material content. However, one facility exists under an NRC license at West Chicago, Illinois." See e.g. 55 FR 11459, 11460 (Exhibit J).

Reciting the NRC and state recognition of the "desirability of reciprocal recognition of licenses and exemption from licensing," Article I of the Agreement was amended to allow state jurisdiction of "the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting 11e.(2) byproduct material" The tying of the regulation of 11e.(2) byproduct material to the extraction or concentration of source material from ore makes it clear that this transfer of authority was intended to cover the former Kerr-McGee mill site, not to create a broad transfer of 11e.(2) authority in conflict with the 1987 actions and the Commission's own public notice. Significantly, under the statute and the 1990 Amendment the continued areas of exclusion from state jurisdiction included authority over production or utilization facilities and the disposal of byproduct material which the Commission determines requires a Commission license.^{3/} Further, the Commission retained certain authorities regarding byproduct material, including the setting of minimum standards. Everything about the 1990 action made it clear that transfer of authority for byproduct material was limited to Kerr-McGee tailings.

IDNS apparently believes that the 1990 amendment altered the NRC's jurisdiction over the Metropolis site, even though the 1987 findings and order about the significance of Metropolis to the national security remained in effect; even though the 1990 amendment was limited to byproduct material from the mill site; even though production facilities were excluded; even though the 1990 notice specifically stated that the only licensee affected was Kerr-McGee in West Chicago; and even though the public notice and all comments on the proposal were apparently directed solely to the Kerr-McGee issue.

Honeywell believes that jurisdiction over its activities remains with the NRC by virtue of the exclusions found in the 1987 agreement and the 1990 amendment, and by virtue of the Allied Chemical order found in the 1990 agreement and left intact by the 1990 Amendment. Certainly the national security concerns which prompted the order have not changed. In fact the need for uniformity of interpretation is emphasized by the differing IDNS and NRC positions on this very

^{3/} As noted above, the NRC had cited DOE's conclusion that the complex of commercial uranium conversion facilities such as Metropolis and the federal enrichment facilities should be considered an important national asset.

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matter. If IDNS were correct, the meaning of a federal statute, in this case section 11e.(2), would be subject to varying interpretations among the states. That cannot be the right result.

Consistent with this understanding, historically the NRC, rather than IDNS, has licensed and inspected the Metropolis facility.

Finally, the 1990 Amendment, on which the state apparently relies, specifically recognizes that if the state “seeks to apply [its] . . . differing standards to a particular site,” as IDNS seeks to do here, further public notice, opportunity for hearing and Commission determination are required. In fact, even if the state were correct (and it clearly is not), given the stringent public notice requirements applicable to Section 274 agreements, extending the 1990 Amendment to include the Metropolis facility, after notice indicating that only Kerr-McGee West Chicago would be affected, would probably invalidate the Amendment as a whole. Certainly it would invalidate the Amendment as to any facility other than Kerr-McGee.^{4/}

Scope of 11e.(2)

As for the interpretation of 11e.(2) as applied to its materials, Honeywell urges NRC to adhere to its November 1999 letter regarding wood chips as well as the Commission’s prior decisions holding that drums shipped from Metropolis to Quivira should be treated as 11e.(2) material. It believes that these interpretations are fully in accordance with the decision of the D.C. Circuit in Kerr-McGee Chemical Corp. v. U.S. Nuclear Regulatory Commission, 903 F.2d 1 (1990), and the Commission’s own rulings.

The consequences of treating these materials as subject to IDNS’ jurisdiction and its differing interpretation transmutes them into low-level radioactive waste (“LLRW”) under Illinois law and subjects them to the IDNS fee structure.^{5/} Illinois seeks to collect those fees, currently \$3.00 per cubic foot, from the Metropolis facility irrespective of any subsequent waste compaction or disposal out of state. For Honeywell, those fees for the materials in question

^{4/} If the state were right on its position regarding jurisdiction, or even if it had any confidence that it were right, surely the place to address its arguments, which call into question central questions of national security, consistency of interpretation and agreement state policies, would be to those at NRC involved with national uniformity concerns, agreement state issues and regional administration. Instead, the state has simply asked the licensing authorities to confirm its jurisdictional interpretation.

^{5/} The Illinois definition of “low-level radioactive waste” expressly excludes 11e.(2) byproduct material. See e.g. 32 Ill. Adm. Code § 609.20.

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would be significant. While the fees were originally imposed by the state to fund siting and construction of the Illinois Low-Level Radioactive Waste Site, that project is now moribund and the fees are being collected and accumulated (over \$20 million per year) despite the failure of their original purpose. Significantly, the IDNS has told Honeywell that it does not disagree with the technical and legal suitability of the disposal undertaken by Honeywell. Apparently, only the fees are at issue.

IDNS has made it clear to Honeywell that it differs strongly with NRC's interpretation of the scope of 11e.(2) byproduct material. Its letters and arguments vary, but include the following:

- Only mill sites can have 11e.(2) byproduct material. IDNS apparently believes that once material leaves a mill it can never be 11e.(2) material. This limitation is inconsistent with the statute and NRC practice and leaves the kind of gap in regulatory coverage which was criticized in Kerr-McGee.
- Since the material in question originally came from source material, IDNS apparently believes that it must always be treated as source material. This interpretation is simply too extreme. Presumably all materials regulated by the AEA come initially from source material. Moreover, even IDNS concedes that the 1987 order confirming NRC jurisdiction over Metropolis source material remains in place and effective, and this argument is inconsistent with that conclusion.
- IDNS argues that the wastes are the uranium "product," not the byproduct. In fact, however, it is perfectly common for a product to become a waste when spilled or left as residue in a drum. See e.g. 40 CFR § 261.33(c) and (d). IDNS' attempted argument is not supported by any authority and is contrary to both usual regulatory practice and to common sense.

Finally, the case law supports Honeywell's view. The Kerr-McGee case demonstrates a direction that the AEA definition of 11e.(2) byproduct material is not to be interpreted narrowly or grudgingly but to be given a common sense reading that treats comparable risks in a comparable way no matter where the regulated material has come to be located. In re International Uranium (USA) Corporation, Docket 40-8681, MLA-4, cited by IDNS, is fully consistent with that direction, focusing on the language of the statute and its intent to provide complete coverage and rejecting state attempts to impose interpretive limitations on its coverage. Honeywell submits that it is IDNS' construction which is tortured, unnecessary and leads to

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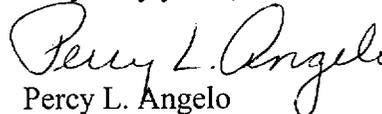
unacceptable results, with each agreement state arriving at and enforcing, its own construction of the Atomic Energy Act, irrespective of the national interest.

IDNS argues for a system where its interpretation of 11e.(2) applies in Illinois and NRC's interpretation (which IDNS describes orally as 180° opposite from its own) applies elsewhere. But such a division is entirely incompatible with the concept of Agreement States administering programs which are consistent with the NRC's; it can lead to great difficulty where wastes are shipped from one state to another for disposal; it is apparently motivated by no compelling state need other than the collection of fees which no longer have a purpose; and it jeopardizes the only remaining uranium conversion facility in the country, a facility which has been identified as presenting a strong common defense interest. It also undermines one of the purposes of federal legislation, which is uniformity of legal standards throughout the nation in an area of compelling national concern.

Honeywell believes that the Commission should adhere to the determination in its November 1999 letter, and confirm both its authority to regulate materials from the Metropolis uranium conversion facility, and its conclusion that the waste in question is 11e.(2) byproduct material.

Of course, we are ready to answer any questions and to provide further facts and discussion or to meet with you to discuss this matter further.

Very truly yours,


Percy L. Angelo

PLA/dd

Enclosures

cc: Russell Eggert, Esq., Mayer, Brown & Platt
Gordon Quin, Esq., Honeywell International
Hugh C. Roberts, Honeywell International
Marshall Shepherd, Honeywell International
Michael Weber, Director, Division of Fuel Cycle Safety & Safeguards, NRC
Thomas Essig, Chief, Uranium Recovery & Low-Level Waste, NRC
James Dyer, Regional Administrator, NRC, Region III
Cynthia Pederson, Director, Division of Nuclear Materials Safety, NRC, Region III
James Lynch, State Agreements Program Officer, NRC, Region III
Stephen J. England, Esq., Illinois Department of Nuclear Safety



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 10, 1999

Mr. William Paul Goranson
Manager, Radiation Safety,
Regulatory Compliance and Licensing
Quivira Mining Company
6305 Waterford Blvd., Suite, 325
Oklahoma City, OK 73118

SUBJECT: DISPOSAL OF BYPRODUCT MATERIAL FROM ALLIED SIGNAL

Dear Mr Goranson:

This is in response to your letter dated September 27, 1999, requesting the Uranium Recovery and Low Level Waste Branch evaluate potential 11e(2) material for disposal at the Quivira - Ambrosia Lake facility. In your letter, you stated that the wood chips considered for disposal were originally wood pallets used to handle and store 55-gallon drums of source material at the AlliedSignal processing facility. The source material originated from several uranium recovery facilities including Quivira. Your letter further stated that the contamination is source material.

We have reviewed your letter and attached data. Based on our review of the information provided to us, we have determined that the wood chips can be classified as 11e(2) material and may be disposed of at the Quivira - Ambrosia Lake facility. The terms and conditions of the license apply to this waste product. Good construction practices should be followed during the disposal of the material, which includes proper placement of the material to maintain the structural integrity of the disposal cell.

If you have any questions concerning this letter, please contact Jill Caverly, the NRC Project Manager.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Surmeier".

John J. Surmeier, Chief
Uranium Recovery and
Low-Level Waste Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

cket No. 40-8905
ense No. SUA-1473



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
URANIUM RECOVERY FIELD OFFICE
BOX 25325
DENVER, COLORADO 80225

MAY 0 6 1987

URFO:NMS
Docket No. 40-8905
SUA-1473, Amendment No. 2
04008905150E

Quivira Mining Company
ATTN: J. E. Cleveland
Environmental Analyst
P. O. Box 25861
Oklahoma City, Oklahoma 73125

Gentlemen:

Pursuant to Title 10, Code of Federal Regulations, Part 40 and in accordance with your submittals dated January 2, 1987 and March 5, 1987, Source Material License SUA-1473 is hereby amended by revising License Condition No. 30 to read as follows:

30. Damaged yellowcake drums may be returned for disposal to Ambrosia Lake Tailings Pile, Tailings Pond No. 2 as described in the licensee's submittals dated January 2, 1987, and March 5, 1987. All such disposal shall be documented.

All other conditions of this license shall remain the same. The license is being reissued in its entirety to incorporate the revision specified above.

The effect of this amendment is to authorize Quivira Mining Company to bury crushed, packaged yellowcake drums from Sequoyah Fuels in Tailings Pond No. 2 at the Ambrosia Lake Milling Facility. The issuance of this amendment was discussed and agreed to via telephone conversation between your Mr. Cleveland and Mr. Shopenn of my staff on April 9, 1987.

FOR THE NUCLEAR REGULATORY COMMISSION


R. Dale Smith, Director
Uranium Recovery Field Office
Region IV

Enclosure: Source Material License SUA-1473

RECEIVED

MAY 1987

NUCLEAR LICENSING



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001
December 7, 1995

Mr. Bill Ferdinand, Manager
Radiation Safety, Licensing and
Regulatory Compliance
Quivira Mining Company
6305 Waterford Bldg., Suite 325
Oklahoma City, Oklahoma 73118

SUBJECT: LICENSE AMENDMENT NO. 34, DISPOSAL OF ALLIED SIGNAL YELLOWCAKE DRUMS

Dear Mr. Ferdinand:

The U. S. Nuclear Regulatory Commission staff has completed its review of Quivira Mining Company's (QMC's) November 16, 1995, amendment request to dispose of Allied Signal crushed yellowcake drums. The staff finds the requested amendment acceptable based on QMC's statement that the drums, and disposal methods, will be the same as previously approved in License Condition (LC) No. 30.

Therefore, pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Part 40, Source Material License SUA-1473 is hereby amended by revising License Condition No. 30 as requested in QMC's November 16, 1995, letter. All other conditions of this license shall remain the same.

The license is being reissued to incorporate the above modification (enclosure). An environmental report is not required from QMC because the amendment does not meet the criteria of 10 CFR 51.60(b)(2). An environmental assessment for this action is not required since this license revision is categorically excluded under 10 CFR 51.22(c)(11).

If you have any questions concerning this letter or the enclosure, please contact Ken Hooks at (301) 415-7777.

Sincerely,

A handwritten signature in cursive script that reads "John C. Thomas for".

Daniel M. Gillen, Acting Chief
High-Level Waste and Uranium Recovery
Projects Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Enclosure: As stated

Docket No. 40-8905
License No. SUA-1473, Amendment No. 34

Specialty Chemicals
Honeywell
Route 45 North
P.O. Box 430
Metropolis, IL 62960
618 524-2111
618 524-6239 Fax

November 6, 2000

Certified Mail:
~~7083-4543~~

State of Illinois
Department of Nuclear Safety
1035 Outer Park Drive
Springfield, Illinois 62704

Attention: Mr. Michael E. Klebe, Chief
Division of Low-Level Radioactive Waste Management

Subject: Illinois Low-Level Radioactive Waste Fees

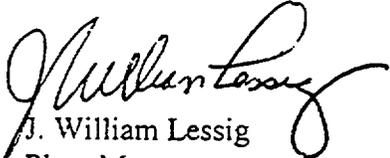
Dear Mr. Klebe:

This letter is to inform you that the U.S. NRC has confirmed the classification of two radioactive waste streams at the Honeywell conversion facility, wooden pallets and 55-gallon metal drums that are contaminated with source material, as Atomic Energy Act Section 11e(2) material. Because wooden pallets and 55-gallon metal drums that are contaminated with source material would therefore not be classified as "Low-Level Radioactive Waste," we have concluded that these two waste streams would not be subject to the low-level radioactive waste fees.

Consequently, we will not include these two waste streams in the fee payments for low-level radioactive waste. We assume that your office is in agreement with this assessment.

If you have any questions, please contact Mr. Marshall Shepherd at 618-524-6238.

Sincerely,


J. William Lessig
Plant Manager

JWL/sm

cc: M. L. Shepherd
H. C. Roberts

cc: MLS
HCR

STATE OF ILLINOIS
DEPARTMENT OF NUCLEAR SAFETY

1035 OUTER PARK DRIVE • SPRINGFIELD, ILLINOIS 62704
217-785-9900 • 217-782-6133 (TDD)

George H. Ryan
Governor

Thomas W. Ortziger
Director

December 5, 2000

CERTIFIED MAIL
7099 3400 0001 1271 3270

J. William Lessig
Plant Manager
Specialty Chemicals
Honeywell
P.O. Box 430
Metropolis, IL 62960

Dear Mr. Lessig:

The Illinois Department of Nuclear Safety (department) has reviewed your letter of November 6, 2000. As you are aware, generators of low-level radioactive waste are required by the Illinois Low-Level Radioactive Waste Management Act to file annual reports with the department and to pay fees to the department. Non-reactor generators pay fees based on the volume of waste shipped or stored for shipment. 420 ILCS 20/13(a).

“Low-level radioactive waste” is defined as “radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or byproduct material as defined in Section 11e(2) of the Atomic Energy Act of 1954.” 420 ILCS 20/3(k). This definition obviously includes low-level radioactive waste classified as source material. Honeywell and its predecessor Allied-Signal have long reported disposal shipments of low-level radioactive waste classified as source material and paid volume based fees to the department for those shipments. We are in agreement with the statement in your letter that the wastes in question are source material. As such, they constitute low-level radioactive waste subject to the department’s fees.

We must admit we do not understand the statement in your letter that NRC has confirmed the wastes “contaminated with source material”, are “Atomic Energy Act Section 11e(2)



J. William Lessig
December 5, 2000
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material.” “Source material” and “byproduct material as defined under Section 11e(2) of the Atomic Energy Act” are different classifications of radioactive material.

The definition of Section 11e(2) byproduct material is “the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.” Honeywell’s Metropolis facility is not an ore processing facility and did not produce tailings. The department has no basis to consider the waste streams at issue to be anything other than source material. As such, they are subject to the department’s reporting and fee requirements. The volumes for the two waste streams you mentioned in your letter must be reported on the Department’s annual survey and will be included in the calculation of your low-level radioactive waste fee. In addition, any shipments of these wastes are subject to the reporting requirements found in 32 Ill. Adm. Code 609 “Access to Facilities for Treatment, Storage, or Disposal of Low-Level Radioactive Waste”.

Any questions you have may be directed to me at the address above.

Sincerely,



Michael E. Klebe, Chief
Division of Low-Level Radioactive
Waste Management

Specialty Chemicals
Honeywell
Route 45 North
P.O. Box 430
Metropolis, IL 62960
618 524-2111
618 524-6239 Fax

December 13 2000

Certified Mail:
7083-4673

Department of Nuclear Safety
1035 Outer Park Drive
Springfield, IL 62704

Attention: Mr. Michael E. Klebe, Chief
Division of Low-Level Radioactive Waste Management

Dear Mr. Klebe:

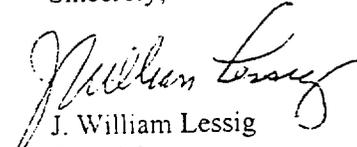
This letter is in response to your letter dated December 5, 2000. The U. S. Nuclear Regulatory Commission has classified our scrap metal drums and wooden pallets as 11e(2) materials. They have the authority to make this classification based on the fact that the contamination is from source material. It is a current industry practice that allows this material to be placed in tailings impoundments which is regulated by the A.E.A. The U.S. NRC is the sole regulator of 11e(2) materials in mill tailings impoundments. Please note the most recent letter from the NRC, dated November 10, 1999, classifies the wood chips as 11e(2) material.

The Illinois Low-Level Radioactive Waste Management Act requires that the department collect a fee from each generator of low-level radioactive waste. The definition of low-level radioactive waste under the Act means waste not classified as "by-product material as defined in Section 11e(2) of the Atomic Energy Act of 1954 (42U.S.C. 2014)."

These two waste streams are classified as 11e(2) and therefore are not subject to the Illinois Department waste fees.

If you have any questions, please contact Mr. Marshall Shepherd at 618-524-6238.

Sincerely,


J. William Lessig
Plant Manager

Attachment: NRC Letter dated November 10, 1999

cc: M. L. Shepherd
H. C. Roberts

FEB-09-2001 11:08 FROM:

TD:615 524 6239

P.002/003

STATE OF ILLINOIS
DEPARTMENT OF NUCLEAR SAFETY

1035 OUTER PARK DRIVE • SPRINGFIELD, ILLINOIS 62704
217-785-9900 • 217-782-6133 (TDD)

George H. Ryan
Governor

Thomas W. Ortziger
Director

February 6, 2001

CERTIFIED MAIL
#7099 3400 0001 1271 4284

J. William Lessig
Plant Manager
Specialty Chemicals
Honeywell
P.O. Box 430
Metropolis, IL 62960

Dear Mr. Lessig:

In response to your letter of December 13, 2000, the Illinois Department of Nuclear Safety does not agree with the determination made by the U.S. Nuclear Regulatory Commission that the two waste streams, scrap metal drums and wooden pallets, are properly classified as Section 11e.(2) byproduct material. While you state that the "NRC is the sole regulator of 11e.(2) byproduct materials in mill tailings impoundments", it is the Department of Nuclear Safety that determines what is and what is not 11e.(2) byproduct material in the state of Illinois. The state of Illinois has assumed regulatory authority over low-level radioactive waste and 11e(2) materials from the NRC through the Agreement State Program.

The NRC retained regulatory authority over the Metropolis facility through an order dated May 14, 1987, which states in paragraph V.a.,

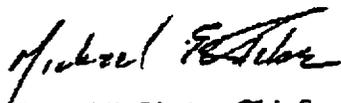
Notwithstanding the provisions of a Section 274b Agreement with the State of Illinois as approved by the Commission the NRC jurisdiction over the possession and use of source material by Allied Chemical (license SUB-526) shall be retained by the NRC . . . (emphasis added)



This order does not address the disposal of source material nor does it address 11e.(2) byproduct material. The order is limited to the possession and use of source material. Therefore, as it relates to the disposal of source material it is the Department of Nuclear Safety that has regulatory authority. The department also has the regulatory authority over all possession, use and disposal of 11e.(2) byproduct material at your facility. It is the Department of Nuclear Safety's position that these wastes are properly classified as low-level radioactive waste and subject to the applicable fees.

Any questions you may have should be directed to me at the address above.

Sincerely,



Michael E. Klebe, Chief
Division of Low-Level Radioactive
Waste Management

Citation
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1987 WL 136413 (F.R.)
(Cite as: 52 FR 22864)

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NOTICES

NUCLEAR REGULATORY COMMISSION

Illinois; Discontinuance of Certain Commission Regulatory Authority and
Responsibility Within the State

Tuesday, June 16, 1987

***22864** AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Agreement With 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 discontinuance by the Commission and assumption by the State of certain Commission regulatory authority. The Agreement is published in accordance with the requirements of Pub. L. 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 Regulations.

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 ***22865** 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: Joel O. Lubenau, State, Local and Indian Tribe Programs, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone (301) 492-9887.

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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 staff's 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 4569. The 4th consecutive weekly notice was published February 11, 1987 at 52 FR 4436.

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 16lb. 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 effectuated 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

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were fully considered by the Commission in its deliberations on the Illinois request. Summaries of the comments and the staff's 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 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 Illinois is authorized under Illinois Revised Statutes, 1985, ch. 111 1/2, par. 216b and ch. 111 1/2, par. 241-19, 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 on 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

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161 of the Act with respect to the following:

- *22866 A. Byproduct material as defined in section 11e.(1) of the Act;
- B. Source materials;
- 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

This 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 material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area specified 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

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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 assistance 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 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 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 VIII.
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.

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(Cite as: 52 FR 22864, *22866)

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 authorizes the licensee to use source material in a UF 6 conversion plant in Metropolis, Illinois. The license was last issued on May 28, 1985 and will expire on June 1, 1990 (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, 2898, 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.

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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 *22867 assure the protection of the common defense and security of the United States.

VI

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.

[FR Doc. 87-13729 Filed 6-15-87; 8:45 am]

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52 FR 22864-02, 1987 WL 136413 (F.R.)
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1990 WL 347143 (F.R.)
(Cite as: 55 FR 46591)

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NOTICES

NUCLEAR REGULATORY COMMISSION

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

Monday, November 5, 1990

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amended agreement with the State of Illinois.

SUMMARY: Notice is hereby given that the Honorable Kenneth M. Carr, Chairman of the United States Nuclear Regulatory Commission, and the Honorable James R. Thompson, Governor of the State of Illinois, signed an Amendment to the existing section 274b Agreement between NRC and the State of Illinois pursuant to section 274 of the Atomic Energy Act of 1954, as amended. The Amendment permits the State to regulate 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material.

The Commission has determined that the Illinois program for regulation of 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material generally is compatible with the Commission's program for the regulation of like materials and adequate to protect the public health and safety with respect to the materials covered by the proposed Amendment. However, certain standards adopted by Illinois differ from the standards adopted and enforced by the Commission for the same purpose. In accordance with the requirements of section 274o of the Atomic Energy Act, as amended, the Commission evaluated those differing standards in general, without reference to a particular site, and determined that those standards are adequate for purposes of amending the Commission's agreement with Illinois. If, at some time in the future, the State seeks to apply those or other differing standards to a particular site, including the West Chicago Rare Earths Facility site, section 274o requires the Commission to provide further notice and opportunity for a public hearing and to determine whether the State's differing standards will achieve a level of stabilization and containment of that site, and a level of protection for public health, safety and the environment from both radiological and nonradiological hazards associated with the site, which is equivalent to, or more stringent than, the level which would be achieved by any requirements adopted and enforced by the Commission for the same purpose.

The proposed Amendment to the existing section 274b Agreement was published in the Federal Register for public comment for four consecutive weeks beginning March 28, 1990 (55 FR 11459).

The Amendment is hereby published in accordance with the requirements of Public Law 86-373.

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FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, State Programs, United States Nuclear Regulatory Commission, Washington, DC 20555 (telephone 301-492-0326).

SUPPLEMENTARY INFORMATION: Public Comments: In response to the FR Notice, the NRC received 166 letters with two commenters (Kerr-McGee and the State of Illinois) submitting supplemental comments. The commenters included local residents (9708 total number of signatures), businesses (20), community leaders (9), the Environmental Protection Agency, the State of Illinois, and Kerr-McGee Chemical Corporation (the only licensee in the State affected by this amendment). Of the letters received, all except Kerr-McGee's were in support of the amendment and transfer of regulatory authority for 11e.(2) byproduct material to the State of Illinois. Kerr-McGee opposed the granting of the amendment and requested that a hearing be held. A list of all commenters was provided to the Commission along with an analysis of the major comments which was prepared by the staff. All comments except for those presented by Kerr-McGee Chemical Corp. supported the proposed amendment to the Agreement and all comments were carefully considered by the Commission in its deliberations on the Illinois request. The comments and the staff's analysis of the major comments are available in the Commission's Public Document Room at 2120 L Street, NW, Washington, DC.

Amendment Number One to the 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 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 Illinois is authorized under Illinois Revised Statutes, 1987, ch. 111 1/2, par. 216b and ch. 111 1/2, par. 241-19 to enter into this Agreement with the Commission; and

Whereas, on June 1, 1987, an Agreement between the Commission and the State of Illinois became effective which provided for State assumption under State law regulatory authority over byproduct material as defined in section 11.e(1) of the Act, source materials, special nuclear materials in quantities not sufficient to form critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons; and

Whereas, article III of that Agreement provides that the Agreement may be amended upon application by the State and approval by the Commission, to include the extraction or concentration of source material from source material *46592 ore and the management and disposal of the resulting byproduct material; and

Whereas, the Governor of the State of Illinois certified on April 11, 1989 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 extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct

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material, and that the State of Illinois desires to assume regulatory responsibility for such materials; and

Whereas, the Commission found on October 17, 1990 that the program of the State for the regulation of the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material 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 where necessary 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 Amendment Number One to the Agreement; and

Whereas, Amendment Number One to the 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:

(1) Article I of the Agreement is hereby amended to expand the scope of the Agreement to include the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in section 11e.(2) of the Act. As amended, article I now reads 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 11e.(1) of the act;
- B. Source materials;
- 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.

Pursuant to article III, and subject to the exceptions provided in articles II, IV and V, the Commission shall discontinue, as of the effective date of this Amendment Number One to 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:

E. The extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in section 11e.(2) of the Act.

(2) Article II of the Agreement is hereby amended by inserting "A." before "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., by deleting paragraph E., relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B.,

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relating to authorities that will be retained by the Commission. As amended, Article II now reads as follows:

Article II

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

1. The construction and operation of any production or utilization facility;
2. The export from or import into the United States of byproduct, source, or special nuclear material, or utilization facility;
3. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission; and
4. 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.,

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Atomic Energy 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 a 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 materials 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);

c. 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 the public health, safety, welfare, or the environment;

d. 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 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

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to the United States or a State;

e. The authority to require the Secretary of the 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 *46593 as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and

f. 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) Article IX of the Agreement is hereby amended by redesignating it article X and by inserting a new article IX. As amended, articles IX and X now read as follows:

Article IX

In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which 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 the 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 which 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 State 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 June 1, 1987, and shall remain in effect unless and until such time as it is terminated pursuant to article VIII.

(4) The Agreement effective June 1, 1987 remains in effect except as modified by amendments contained in paragraphs (1), (2), and (3) of this Amendment Number One.

(5) This Amendment Number One to the June 1, 1987 Agreement shall become effective on November 1, 1990 and shall remain in effect until such time as it is terminated pursuant to article VIII.

Done at Rockville, Maryland, in triplicate, this 18th day of October, 1990.
 For the United States Nuclear Regulatory Commission.

Kenneth M. Carr,

55 FR 46591-02
(Cite as: 55 FR 46591, *46593)

Chairman.

Done at Springfield, Illinois, in triplicate, this 23rd day of October, 1990.
For the State of Illinois.

James R. Thompson,

Governor.

Dated at Rockville, MD this 26th day of October, 1990.
For the the United States Nuclear Regulatory Commission.

Carlton Kammerer,

Director, State Programs, Office of Governmental and Public Affairs.

[FR Doc. 90-26098 Filed 11-2-90; 8:45 am]

BILLING CODE 7590-01-M

55 FR 46591-02, 1990 WL 347143 (F.R.)
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55 FR 14528-01
 (Cite as: 55 FR 14528, *14530)

d. Consideration of long-term impacts of licensed activities.

The State's statutes and its implementing regulations provide sufficient authority for the IDNS to comply with the environmental assessment procedures required by UMTRCA. Part 332 of Illinois regulations (section 332.100) addresses the procedural requirements for environmental assessments and defines the scope of assessments and associated administrative procedures. In accordance with Criterion 29f., section 332.100 of the Illinois regulations bans major construction prior to completion of the environmental analysis.

References: Illinois Program Statement, Application to Amend the Agreement Between Illinois and the U.S. Nuclear Regulatory Commission; Ill. Rev. Stat. 1987, ch. 111 1/2, par. 211-229, as amended by P.A.85-1160; 32 Ill. Adm. Code Part 332.

B. Regulations

32. State regulations should be reviewed for regulatory requirements, and where necessary incorporate regulatory language which is equivalent, to the extent practicable, or more stringent than regulations and standards adopted and enforced by the Commission, as required by section 274o (see 10 CFR 40, Appendix A, and 10 CFR 150.31(b)).

On January 10, 1990 (effective date: January 4, 1990), final Illinois regulations (32 Ill. Adm. Code Part 332) were submitted to NRC completing the Governor's package submitted April 11, 1989. These final regulations establish State regulations that are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Environmental Protection Agency. It is the staff's opinion that these rules have, to the maximum extent practicable, achieved the same objective as the *14531 NRC's Part 40 regulations except that certain parts of the State regulations are more stringent than the NRC regulations and are, therefore, more restrictive than NRC regulations. The staff has identified State requirements which NRC does not address in its regulations that may also be considered to be more stringent than NRC requirements. The sections are identified below. The staff is proposing to find the following sections more stringent and in accord with section 274o of the Act only for the purpose of finding the Illinois program adequate, compatible and in compliance with statutory requirements so that authority may be relinquished lawfully to the State. The staff offers no opinion whether, as applied to any particular site, the findings required by the last paragraph of section 274o can be made.

Criteria which are more stringent than 10 CFR part 40:

1. Part 332--This part of the Illinois regulations is considered more stringent in that it does not contain a specific exemption provision such as 10 CFR 40.14(a.) or a provision for approving alternatives to these regulations such as provided for in the Introduction of appendix A to 10 CFR part 40.
2. Section 332.70--This section is considered more stringent in that the NRC performance standards have been written as technical criteria thereby eliminating the flexibility inherent in NRC regulations.
3. Section 332.170c)--This section is considered more stringent in that the annual average total radon release rate of 2 picocurie per square meter per second flux limit is more stringent than the 20 picocurie per meter square per

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second limit in criterion 6 of appendix A to 10 CFR part 40.

4. Subsection 332.210b)1)--This subsection banning disposal sites within a distance of 2.5 km of any municipality without the consent of the municipality is more stringent than NRC's performance objective of locating disposal sites in remote areas.

5. Section 332.220b)1)--This section is considered more stringent in that it does not allow slopes steeper than 10h:1v.

6. Section 332.240--This section is considered more stringent in that the licensee must defend its design as a 1000 year design. This section does not have the flexibility of criterion 6 of appendix A to 10 CFR part 40 that states following the 1000-year criterion, "to the extent reasonably achievable, and, in any case, for at least 200 years."

7. Section 332.250 b) and c)--subsection b) is considered more stringent in that it requires chemical treatment of the tailings which is not required in Appendix A to 10 CFR Part 40. Subsection c) is considered more stringent in that it requires groundwater restoration to levels consistent with those before operations. NRC Criterion 5B(5) (b) and (c) allows concentration values up to EPA drinking limits.

Criteria which are not in NRC's 10 CFR part 40 regulations:

1. Section 332.20--Definition of Buffer Zone.
 2. Section 332.20--Definition of Minor Custodial Activities.
 3. Section 332.20--Definition of Postclosure.
 4. Section 332.20--Definition of Reclamation. This term is used in 10 CFR Part 40; however, this definition is not in NRC's regulations.
 5. Section 332.140--This criterion is not in 10 CFR part 40; however, it is generally consistent with NRC's licensing practice.
 6. Section 332.170 b)--This criterion is not in 10 CFR part 50; however, it is consistent with 10 CFR 20.106(a).
 7. Section 332.180--This criterion is not in 10 CFR part 40.
 8. Section 332.210--The siting criteria in subparts (b) (1), (2), (3), (6), and (7) are not contained in 10 CFR part 40.
 9. Section 332.250 (a)--Such a ban of release of liquids is not in NRC's regulations.
 10. Section 332.290 (e)--No annual financial report is required by NRC.
- Reference: 32 Ill. Adm. Code part 332.

C. Organizational Relationships Within the State

33. Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings. Charts should be developed which show the management organization and lines of authority. These charts should define the specific lines of supervision from program management within the radiation control group and any other department within the State responsible for contributing to the regulation of source material processing and disposal of the resulting tailings. When other State agencies or regional offices are utilized, the lines of communication and administrative control between other agencies and/or regions and the program director should be clearly drawn.

Organizational charts outlining the IDNS structure have been included in the application. From these organizational charts, it has been determined that the

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IDNS has a structure capable of regulating all phases of source material milling activities including the preparation of environmental assessments. This conclusion is based on the following findings: (1) The Office of Radiation Safety has been designated as the lead office within IDNS for regulating uranium and thorium processing and the resulting 11e.(2) byproduct material; and (2) the administrative, technical, legal and emergency support functions will be provided from other offices within IDNS, i.e., Office of Legal Counsel, Office of Environmental Safety, Office of Nuclear Facility Safety, and Office of Administrative Services.

Internal responsibilities have been described by the IDNS to be as follows: (1) overall program management will be implemented by the Director; (2) the Office of Radiation Safety is responsible for the licensing of radioactive materials and will be the lead office for processing all license applications and preparation of environmental assessments; (3) the Office of Environmental Safety is to assist in the evaluation of environmental impacts and to provide support for all laboratory analysis and environmental monitoring; (4) the Office of Nuclear Facility Safety will assist in the evaluation of potential radiological accidents; (5) the Office of Legal Counsel will provide assistance in all legal matters; and (6) the Office of Administrative Services will assist in budgeting and personnel management. IDNS has further stated that for those areas of environmental assessments that IDNS believes consultation to be appropriate, other State agencies or private consultants will be contracted to help in the environmental assessment. IDNS has indicated that assistance from the Illinois Department of Energy and Natural Resources and the State Water Survey Division may be sought for hydrologic assessments. NRC staff notes that the IDNS did not provide any formal agreements, such as MOUs with any of these other organizations that, if put in place, would assure their availability in a timely manner. However, IDNS has previously executed contracts with other State agencies. As an example, IDNS has executed an MOU with the Illinois Environmental Protection Agency regarding the disposal of water treatment wastes. Although the program statement did not specifically identify the source or amount of funds, it did state that IDNS will provide for funding if consultants are deemed necessary and the Office of Administrative Services will assist in contract preparation and fiscal management. For those situations where consultants are used, IDNS stated that they will seek assistance from their legal counsel to avoid conflicts of interest. IDNS has not provided any specific *14532 information about the budget or proposed budget for the portion of the radiation control program allocated to the regulation of uranium and thorium mills and 11e.(2) byproduct material. However, the IDNS has committed to the allocation of sufficient staff time to handle the uranium and thorium mills and 11e.(2) byproduct material currently in the State.

The program statement reveals that IDNS has not identified any specific medical consultants that would be available for medical questions that may be encountered with the uranium or thorium milling industry and its 11e.(2) byproduct material. The program statement states that, should medical assistance be needed, IDNS will seek assistance from a national laboratory such as Argonne National Laboratory. Such assistance has been requested and provided in the past.

Experience has shown that a scoping document is a valuable tool for bringing an environmental assessment to a satisfactory conclusion. IDNS indicated that if

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assistance is requested through contracts or MOUs adequate guidance such as a scoping document will be prepared by the IDNS. This document will delineate areas and scope of work to be performed within a given time constraint by each participating agency or contractor.

Reference: Illinois Program Statement, Section III.

D. Personnel

34. Personnel needed in the processing of the license application can be identified or grouped according to the following skills: Technical, Administrative, and Support.

In order to meet the requirements of UMTRCA, it is estimated that on the order of 2 to 2.75 total professional person-years' effort is necessary to process and evaluate a new conventional mill license, in-situ license, or major license renewal. A complete review of in-plant safety, completion of an environmental assessment, and use of consultants in these assessments are primary considerations in the the total professional effort for each licensing case. With respect to clerical support, one secretary is usually required to process two conventional milling applications. Legal support is also an essential element of the mill program, and the effort is believed to be a minimum of one-half staff year. In addition, consideration must be given to such post-licensing activities as issuance of minor amendments, mill inspection, and environmental monitoring. Professional staff effort for these activities is estimated at 0.5 to 1.0 person-years for each year of post-licensing activities.

Currently there are no active uranium or thorium mills processing ore for its source material content in the State of Illinois. However, as identified in the introduction, one facility located at West Chicago has been identified as a closed facility which has associated with it radiologically contaminated material on and offsite. As stated earlier, the radiologically contaminated material in and along Kress Creek and the West Branch of the DuPage River is 11e.(2) byproduct material in addition to the material on the West Chicago site. This material would come under the regulatory authority of the IDNS upon consummation of Illinois request for an amended agreement. The regulatory activities assumed by the IDNS upon execution of the amended agreement would center mainly around decommissioning and reclamation of the West Chicago site and its associated wastes.

In the application for amendment of the agreement as updated March 14, 1990, the IDNS had identified 11 key technical personnel for use in regulation uranium and thorium processing facilities and their associated 11e.(2) byproduct material. A review of these staff resumes shows that they have the necessary education, training, and experience to ensure effective implementation of a regulatory program.

Seven key administrative personnel have been identified by the IDNS who will provide the necessary management guidance and policy direction necessary to assure completion of the licensing action. The positions of the seven personnel in the IDNS structure are the director, four office managers, one assistant office manager, and one division chief.

Four key persons have been identified as providing operational support, legal support, and laboratory services. The positions of these four people are one chief legal counsel, one senior staff attorney, one section chief of

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radioecology, and one division chief of radiochemistry.

The NRC staff has concluded that the total professional staff-years effort which is available within the IDNS and will be directly responsible for regulating uranium and thorium mills and 11e.(2) byproduct material is within the guidelines and consists of the necessary specialities for evaluating license applications. Additionally, IDNS has states that consultants will be utilized, if necessary.

Abridged versions of the curricula vitae for key IDNS personnel involved in the regulation of source material milling facilities and 11e.(2) byproduct material are as follows (as updated by IDNS on March 14, 1990):

Administrative Personnel:

T.L. Lash, Ph.D.--Director, IDNS: Ph.D. Molecular Biophysics and Biochemistry, Yale University; M.Ph. Molecular Biophysics and Biochemistry, Yale University; B.A. Physics, Reed College. Work Experience, 1970 to present, held positions as Postdoctoral Fellow, Yale University; Staff Scientist, NRDC; Director, Science and Public Policy, the Keystone Center; Science Director, Scientists' Institute for Public Information; Deputy Director, IDNS, and Director, IDNS.

P.D. Eastvold--Manager, Office of Radiation Safety; B.S. General Science/ Nuclear Medical Technology, University of Iowa. Work Experience, 1970 to present, held positions in the Radiation Protection Office, University of Iowa; Illinois Department of Public Health; and as Manager, Office of Radiation Safety, IDNS.

G.W. Kerr, CHP--Assistant Office Manager, Office of Radiation Safety; M.A. Economics, Trinity College; B.A. Biology, Peru State College. Work Experience, 1956 to present, held positions as Senior Industrial Hygienist, Pratt and Whitney Aircraft; Technical staff positions, Atomic Energy Commission; Manager and Assistant Director for State Agreements, USNRC; Director, Office of State Programs, USNRC; Independent Consultant; and Assistant Office Manager, Office of Radiation Safety, IDNS.

C.W. Miller, Ph.D.--Manager, Office of Environmental Safety; Ph.D. Bionucleonics/Health Physics, Purdue University; M.S. Meteorology, University of Michigan; B.S. Physics/Math, Ball State University. Work Experience, 1967 to present, held positions in Anderson College in Physics; Health and Safety Research Division, Oak Ridge National Laboratory; and as Nuclear Safety Scientist, Office of Nuclear Facility Safety; and Manager, Office of Environmental Safety, IDNS.

R.R. Wright--Manager, Office of Nuclear Facility Safety; Master of Public Administration, American University; B.S. Engineering, U.S. Naval Academy; Undergraduate Studies, Geology, Oklahoma University. Work Experience, 1954 to present, held positions in U.S. Navy, Nuclear Propulsion plants, Nuclear Submarines and Nuclear Weapons; Advance Science and Technology Associates Inc.; and as Manager, Office of Nuclear Facility Safety, IDNS.

D.A. Joswiak--Manager, Office of Administrative Services; M.S. Business *14533 Public Management, University of Wisconsin; M.A. Public Policy and Administration, University of Wisconsin; B.A. Political Science and Economics, University of Wisconsin. Work Experience, 1973 to present, held positions as Research Assistant, Public Expenditure Survey of Wisconsin, Inc.; Budget Analyst and Management Systems Specialist, Illinois Department of Transportation; Chief Fiscal Officer, Illinois Department of Financial Institutions; Associate Director for Administration, Illinois Emergency

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Services and Disaster Agency; and Manager, Office of Administrative Services, IDNS.

S.C. Collins--Chief, Division of Radioactive Materials; M.S. Radiation Science (health physics), University of Arkansas School of Medical Sciences; B.A. Mathematics/Chemistry, Arkansas Tech University. Work Experience, 1967 to present, held positions as laboratory assistant and instructor, Arkansas Tech University; Health Physicist II, Arkansas State Department of Health; Nuclear Medical Science Office, U.S. Army Reserve; Public Health Physicist II, Florida Division of Health; Radiation Specialist IV, Louisiana Nuclear Energy Division; Environmental Program Manager, Louisiana Nuclear Energy Division; Nuclear Medical Science Instructor, U.S. Army Academy of Health Sciences; Radiation Protection Program Manager, Louisiana Nuclear Energy Division; and Chief, Division of Radioactive Materials, IDNS.

Administrative Support Personnel:

S.J. England--Chief Legal Counsel, Office of Legal Counsel; J.D. Boston University School of Law; B.A. University of Illinois. Work Experience, 1976 to present, held positions in City of Joliet, Illinois; Illinois Attorney General's office; Illinois Department of Transportation; and as Chief Legal Counsel, Office of Legal Counsel, IDNS.

B.P. Salus--Senior Staff Attorney, Office of Legal Counsel; J.D. Washington University School of Law; B.S. Vanderbilt University. Work Experience, 1984 to present, positions as Research Assistant, Washington University School of Law; Law Clerk to Chief Judge, U.S. District Court; and Staff Attorney, Office of Legal Counsel, IDNS.

R.A. Allen--Office of Environmental Safety; B.A. Biological Sciences, Rutgers University. Work experience, 1976 to present, held positions as Health Physicist and R.S.O., Roche Medi+Physics; Environmental Protection Group Leader, Fermi National Accelerator Laboratory; and Radioecology Section Head, Office of Environmental Safety, IDNS.

Lih-Ching Chu, Ph.D.--Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety; Ph.D. Chemistry, Washington University; M.A. Chemistry, Washington University; M.S. Chemistry, East Texas State University; B.S. Chemistry, Tankang College of Arts and Sciences. Work Experience, 1971 to present, held positions in Taiwan Military, ROC; Young-Ho Middle School, Taiwan; East Texas State University; Washington University, St. Louis; Illinois Department of Energy and Natural Resources; and as Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety, IDNS.

Technical Personnel:

J.G. Klinger--Head, Licensing Section, IDNS: M.S. Health Care Management and Public Administration, Southwest Texas State University; B.A. Microbiology and Chemistry, University of Texas; A.A. Glendale Community College. Work Experience, 1966 to present, held positions in U.S. Marine Corps and U.S. Naval Reserve Medical Service Corps; Algebra Tutor, Glendale; Laboratory Assistant, University of Texas; Food and Drug Inspector, Texas Department of Health; Regional Food and Drug Supervisor, Texas Department of Health; Chief of Food Control, Division of Food and Drugs, Texas Department of Health; Special Assistant to the Commissioner for Board of Health Affairs, Texas Department of Health; Administrator, Licensing Branch, Bureau of Radiation Control, Texas Department of Health; and Head, Licensing Section, IDNS.

D.F. Harmon--Licensing, Office of Radiation Safety, IDNS; M.S. Physics,

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Vanderbilt University; B.S. Physics, Tennessee Technological University. Work Experience, 1954 to present, held positions in Military Service, U.S. Army; Ballistics Research Laboratory, Aberdeen Proving Ground, Maryland and Camp Mercury, Nevada Test Site; Chemistry Department, Vanderbilt University; Radiation Safety Branch, Division of Licensing and Regulations, U.S. NRC; Source and Special Nuclear Materials Branch, Division of Materials Licensing, U.S. NRC; Materials Branch, Division of Materials Licensing, U.S. NRC; Fuels and Materials Standards Branch, Directorate of Regulatory Standards, U.S. NRC; Fuels Process System Standards Branch, Office of Standards Development, U.S. NRC; Waste Management Branch, Office of Nuclear Regulatory Research, U.S. NRC; Health Effects Branch, Office of Nuclear Regulatory Research, U.S. NRC; and Licensing, Office of Radiation Safety, IDNS.

M.H. Momeni, Ph.D.--Office of Radiation Safety, IDNS; Ph.D., Biophysics/Radiation Biology, University of Iowa; M.S. Nuclear Physics, University of Iowa; B.A. Physics/Mathematics, Luther College. Work Experience, 1962 to present, held positions as Science Teacher, Urbana Consolidated Schools; Biophysicist-Lecturer, University of California, Davis; Senior Scientist, Argonne National Laboratory; Professor and Director of Health Physics Program, San Diego State University; Scientist, Oak Ridge Associated Universities; and Health Physicists, Office of Radiation Safety, IDNS.

D.J. Scherer--Licensing, Office of Radiation Safety; M.S. Physics, Virginia Polytechnic Institute and State University; B.S. Physics, Virginia Military Institute. Work Experience, 1980 to present, held positions as graduate Teaching Assistant, VPISU; Graduate Research Assistant, Stanford Linear Accelerator Center; Nuclear Medical Science Officer, U.S. Environmental Hygiene Agency; Medical Plans Officer, Officer of the Surgeon, XVIII Airborne Corps; Chief, Health Physics Section, Womback Army Community Hospital; Assistant Health Physicist, Princeton University; Senior Health Physicist and Radiation Safety Officer, Albany Medical Center; and Health Physicist, Office of Radiation Safety, IDNS.

D.A. Huckaba, P.E.-- Office of Radiation Safety; B.S. Civil Engineering, University of Missouri. Work Experience, 1969 to present, held positions as Highway Engineer, Missouri Department of Transportation; Chief Highway Engineer, MTA, Inc.; and Engineer, Office of Radiation Safety, IDNS.

G.N. Wright, P.E.--Office of Nuclear Facility Safety; Degree Work in Public Administration, Sangamon State University; M.S. Nuclear Engineering, University of Illinois; B.S. Physics/Mathematics, Milliken University. Work experience, 1965 to present, held positions in Westinghouse Electric Company; Sangamo-Weston Electronics Company; Illinois Department of Public Health; and as Senior Nuclear Engineer, Office of Radiation Safety, IDNS.

D.D. Ed--Office of Environmental Safety; B.S. Chemistry, University of Illinois. Work experience, 1972 to present, held positions in Illinois Environmental Protection Agency, Illinois Department of Public Health; and as Nuclear Safety Scientist, Office of Environmental Safety, IDNS.

T.A. Kerr--Chief, Division of Low-Level Waste Management, Office of *14534 Environmental Safety; Business Administration, University of North Carolina. Work Experience 1973 to present, held positions in U.S. Navy, Electronics Technician-Reactor operator; Supervisor Solidification Services, Chem-Nuclear Systems, Inc.; Associate Instructor, Duke Power Co.; and as Chief, Division of Low-Level Waste Management, IDNS.

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M.E. Klebe, P.E.--Office of Environmental Safety; M.S. Mining Engineering, Montana College of Mineral Science and Technology; B.S. Mining Engineering, Montana College of Mineral Science and Technology. Work Experience, 1982 to present, held positions as Mining Engineer, Shell Mining Co; and Nuclear Safety Engineer, Office of Environmental Safety, IDNS.

C.G. Vinson--Office of Radiation Safety; B.S. Biology, Furman University. Work Experience, 1983 to present, held positions as Industrial Hygiene Technician, J.P. Stevens Textile Company; Environmental Engineering Specialist, Union Camp Corporation; Health Physicist and Section Manager, Bureau of Radiological Health, South Carolina Department of Health and Environmental Control; and Health Physicist, Office of Radiation Safety, IDNS.

M. Walle--Office of Radiation Safety; B.S. Earth Sciences, University of New Orleans; ARRT, Mercy Hospital School of X-Ray Technology. Work Experience, 1965 to present, held positions as Radiological Technologist, Mercy Hospital; Nuclear Medicine Technologist, Pathology Medical Services, PC; Engineering-Geologist, U.S. Army Corps of Engineers; Civil Materials Technician, Geo, International; Civil Construction Inspector, Minority Engineers of Louisiana; Project Manager, Nuclear Gauge Radiation Safety Officer, U.S. Testing Co., Inc.; and Health Physicist, Office of Radiation Safety, IDNS.

IDNS recognizes that a skilled and experienced staff is essential to accomplishing its mission. Consequently, technical training is a high priority for the IDNS. The IDNS training coordinator is developing a comprehensive technical and managerial training program, using a wide variety of professional seminars and courses. Courses may be sponsored by either government or private sector organizations. In addition, in-house courses to supplement outside training are arranged as necessary. These in-house courses are presented either by IDNS staff or outside contractors.

The IDNS has stated that for active extraction and concentration facilities it will allocate from 2.5 to 5.75 person-years for each major licensing action. This time will be apportioned as follows: 2 to 2.75 staff years effort for technical and administrative activities; 0.5 to 1 staff year effort for legal support; and 2 staff years effort for clerical support.

Following initial licensure, IDNS plans to assign an annual average of from 0.5 to 1 full-time equivalent staffing for each license. This allocation is for inspections, environmental assessments, minor amendments and environmental surveillance. IDNS anticipates that less time might be required to administer a license authorizing only decontamination, decommissioning, disposal, or post-closure monitoring. This appears to be a reasonable assumption on the part of IDNS.

Many of these key personnel have complementary training to their profession and several have been identified as having training in uranium mill related topics. Some of these individuals have written or published articles on uranium mill topics. The IDNS has stated that it will consult with other State agencies. Two State agencies have been identified by the IDNS at this time as providing the IDNS assistance in reviewing the impact of byproduct material on the environment. They are the Illinois Department of Energy and Natural Resources and the Illinois Environmental Protection Agency. However, the scope and depth of work to be completed by these agencies has not been identified. Because there are no indications that any uranium milling facilities are planning to operate in Illinois at this time, and because much environmental assessment work has

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been completed for the Kerr-McGee site, the lack of MOUs with other State agencies is not considered a matter of paramount importance at this time. The IDNS can pursue this matter at some point in the future upon first indication that such MOUs will be necessary.

References: Illinois Program Statement, Section IV, "Personnel," Section VI, "Implementation of the Regulatory Program," and Appendices F. and G.

E. Functions to be Covered

35. The State should develop procedures for licensing, inspection, preparation of environmental assessments, and operational data review.

The IDNS has stated that regulation of recovery and processing of uranium and thorium and management of 11e.(2) byproduct material may be divided into four stages: licensing, environmental assessments, inspection and enforcement, and review of operational data.

a. Licensing

The licensing evaluation or assessment should include in-plant radiological safety aspects in occupational or restricted areas and environmental impacts to populations in unrestricted areas from the facility. It is expected that the State will review, evaluate and provide documentation of these evaluations.

The IDNS has stated in its program statement that the IDNS licensing evaluations or assessments will include radiological safety aspects in occupational or restricted areas and environmental impacts to population in unrestricted areas surrounding the facilities. IDNS has stated that they will review and evaluate license applications and prepare documentation of the evaluations. The IDNS evaluation will include, as necessary, pre-licensing visits to obtain relevant information directly. Items to be evaluated include, but are not limited to, the following: general statement of proposed activities; scope of the proposed action; specific activities to be conducted; administrative procedures; facility organization and radiological safety responsibilities, authorities, and personnel qualifications; licensee audits and inspections, radiation safety program, control and monitoring; radiation safety training programs for workers; restricted area markings and access control; at existing mills, review of monitoring data, exposure records, licensee audit and inspection records, and other records applicable to existing mills; environmental monitoring; radiological emergency procedures; product transportation; tailings management facilities and procedures; site and physical plant decommissioning procedures other than tailings; and employee exposure data and bioassay programs.

b. Environmental Assessments

The environmental evaluation should consist of a detailed and documented evaluation of the items listed in subsection 2740 of the Act.

IDNS regulations, part 332, establish requirements for environmental assessments that define the scope of the assessments and specify associated administrative procedures. Part 332 requires that the following topics be included in the environmental assessment: an analysis of the radiological and

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nonradiological public health impacts; an analysis of any impact on surface water or groundwater; *14535 consideration of alternatives to the licensed activities; and consideration of long-term impacts of licensed activities. The IDNS has stated in their program statement that environmental assessments will consist, at a minimum, of detailed and documented evaluations of the following items: Topography; Geology; Hydrology and water quality; Meteorology; Background radiation; Tailings retention system; Interim stabilization, Reclamation; Site decommissioning programs; Radiological dose assessment which addresses source terms, exposure pathways, dose commitment to individuals, dose commitment to the population, evaluation of radiological impacts to the public to include a determination of compliance with State and Federal regulations and comparisons with background values, occupational dose, and radiological impact to biota other than man; Radiological monitoring programs to include pre-operational, operational, and post-operational monitoring; Impacts to quality and quantity of surface and groundwater; Environmental effects of accidents; and Evaluation of tailings management alternatives in terms of Illinois Regulations, part 332.

IDNS has also stated in their program statement that they will also examine the following items during preparation of environmental assessments: Ecology; Environmental effects of site preparation and facility construction; Environmental effects or use and discharge of chemicals and fuels; and Economic and social effects.

Although the IDNS regulations do not explicitly request the licensee to prepare a document called an Environmental Report, the regulations do require the licensee to provide the information in and to perform the analyses normally done in an Environmental Report.

c. Inspection and Enforcement

As a minimum, items which should be covered during the inspection of a uranium or thorium mill should be those items evaluated in the in-plant safety review, the environmental monitoring programs, and the byproduct material management plan. In addition, the inspector should perform independent surveys and sampling. A complete inspection should be performed at least once per year.

The IDNS has stated items examined during inspections will be consistent with items evaluated during licensing. IDNS will use appropriate NRC regulatory and inspection guides for guidance. A complete inspection is to be performed at least annually. As part of the IDNS inspection program, the inspectors will perform independent surveys and sampling in addition to examining aspects of licensee performance in: Administration; Mill processes including any additions, deletions, or operational changes; Accidents/incidents; Notices, instructions, and reports to workers in accordance with 32 Ill. Adm. Code 400; Action taken on previous findings; A tour of the facilities at the mill including tailings and waste management to determine compliance with regulations and license conditions; Records; Respiratory protection and bioassay to determine compliance with license conditions and 32 Ill. Adm. Code 340; Effluent and environmental monitoring; Training programs; Transportation and shipping; and Internal review and audit by management. Following each inspection, the inspector will confer with licensee representatives to inform them of the inspection results. The inspectors will submit a comprehensive

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written report to the Springfield headquarters describing inspection findings and detailing any apparent violations.

The IDNS enforcement policy is described as follows: The IDNS states that the purpose of the enforcement program is to: ensure compliance with Departmental regulations and license conditions; obtain prompt correction of violations and adverse conditions that may affect safety; deter future violations and occurrences of conditions inimical to safety; and encourage improvement of licensee performance, including prompt identification and reporting of potential safety problems.

The IDNS enforcement procedures have been described as follows: If IDNS discovers any deficiencies during an inspection, IDNS will send the licensee a written notice itemizing the area(s) of deficiency and will require the licensee to submit within 30 days of the date of the notice a written response which will state the corrective steps that have been taken by the licensee and the results achieved; the corrective steps that will be taken; and the date when full compliance will be achieved. If the licensee fails to provide an adequate response to the written notice, the IDNS normally holds a management conference with the licensee prior to taking enforcement action. The purpose of these conferences is to discuss items of deficiency or nonconformance, their significance and causes, and the licensee's corrective action. If compliance cannot be achieved through these informal conferences, IDNS will take more formal enforcement action. All non-emergency enforcement actions will be initiated by the issuance of a Preliminary Order and Notice of Opportunity for Hearing as afforded by Code 200 of the Illinois' regulations. The Order will itemize the alleged violations and direct the licensee to remedy these violations within a given time unless a hearing is requested within 10 days of the date of the Preliminary Order. In addition, the licensee may request an informal conference prior to or during the hearing. In cases where there is an imminent threat to public health and safety, IDNS has stated it is prepared to take immediate action in accordance with State law. State law provides that, if the IDNS finds that a condition exists which constitutes an immediate threat to public health due to the violation of any provisions of the Radiation Protection Act or any code, rule, regulation or order promulgated under the Radiation Protection Act and requires immediate action to protect the public health or welfare, IDNS may issue an order reciting the existence of such an immediate threat and the findings of the IDNS pertaining to the threat. The IDNS may summarily cause the abatement of such violation or may direct the Attorney General to obtain an injunction against such violator. An abatement order will be effective immediately, but will include notice of the time and place of a public hearing before the IDNS to be held within 30 days of the date of such order to assure the justification of such order. The IDNS has exercised this authority on two occasions since becoming an Agreement State. The first was in response to widespread facility contamination from leaking static eliminators, and the second was to remediate a health and safety hazard caused by inadequate radiation safety practices of a licensee.

Other remedial actions available to IDNS include orders to modify, suspend, or revoke licenses, assessment of civil penalties, and impoundment of radiation sources. Also, licenses may be modified, suspended or revoked to remove a threat to public health and safety and the environment and for any reason for which license modification, suspension, or revocation is legally authorized.

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No order of the IDNS, except an order to abate an immediate threat to health, will take effect until the IDNS has found upon conclusion of such hearing that a condition exists which constitutes a violation of any provision of the Radiation Protection Act or any code, rule or regulation promulgated under the Radiation Protection Act except in the event that the right to public hearing has been waived by the licensee, in which case the order shall take effect *14536 immediately. Follow-up inspections are to be conducted as necessary by IDNS staff to verify compliance with IDNS rules and enforcement orders and to rule out willful or flagrant violations, repeated poor performance in areas of concern, and serious breakdown in management controls. All previous areas of deficiency will also be given special attention by the inspector during the following routine inspection of the facility.

As a result of program reviews conducted on December 7-18, 1987 and January 29 through February 9, 1990, the NRC staff concluded that the IDNS has an acceptable licensing program which is capable of determining whether a licensee or applicant can operate safely and in compliance with the regulations and license conditions. Likewise, during these program reviews, the NRC staff concluded that the IDNS has an acceptable compliance program which assures that licensee activities are being conducted in compliance with regulatory requirements and consistent with good safety practices.

d. Operational Data Review

To enhance radiological assessment capability and to confirm doses to receptors in unrestricted areas, States should require the semiannual reports, preferably within 60 days after January 1, and July 1, of each year, specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation. This data shall be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation doses to the public. Additionally, all data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time periods and frequency. The data will be reported in a manner that will allow the regulatory agency to confirm the dose to receptors.

IDNS has stated that according to 32 Ill. Adm. Code 332, IDNS will require licensees to submit written reports at least semiannually that identify quantities of radionuclides released to unrestricted areas in liquid, gaseous, and particulate effluents during specified periods of operation. IDNS will also require submission of data from licensee environmental monitoring programs. Written reports and data must be for identical periods and frequencies and in a form permitting confirmation of potential annual radiation doses to the public.

Section 332.290f of 32 Ill. Adm. Code 332 requires semiannual reports to be filed within 60 days after January 1 and July 1 of each year covering the previous six months.

References: Illinois Program Statement, Section VI, "Implementation of the Regulatory Program" and 32 Ill. Adm. Code Parts 200, 332, and 340.

F. Instrumentation

36. The State should have available both field and laboratory instrumentation

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sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

IDNS has available an extensive inventory of field and laboratory instrumentation for radiation detection and measurement. A fully equipped radiochemistry facility has been established for performing radiochemical analysis of radioactive samples. Additionally, the IDNS has a well equipped mobile field laboratory which can be used for routine sample analysis while in a standby mode for emergency response. IDNS has also reported that they have twenty-two portable instrumentation kits available for use. Appendix H to the program statement provides an overview of the laboratory and instrument capabilities and lists the instrumentation available to the State.

IDNS has participated in a cross-comparison study on analysis of radionuclides in drinking water. The study has been completed and IDNS is expecting certification at time of this analysis.

Although IDNS did not provide any information on Equipment Calibration procedures, the program reviews conducted December 7-19, 1987 and January 29 through February 8, 1990 found that the State had adequate instrumentation for surveying licensee operations and satisfied the requirements for calibrating its radiation detection equipment.

References: Illinois Program Statement, Section V, "Instrumentation," and Appendix H.

III. Staff Conclusion

Section 274d of the Atomic Energy of 1954, as amended, states:

The Commission shall enter into an agreement under subsection b of this section with any State if--

(1) The Governor of the State certifies that 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 the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is in accordance with the requirements of subsection 0, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

The amendment to the State of Illinois agreement is for source material milling activities including the resulting 11e.(2) byproduct material to which section 274o of the Act applies. Section 274o provides that the State may adopt standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose. The staff has identified some sections of the State's regulations that are considered to be more stringent than NRC's regulations. The NRC staff has concluded that the program of the State of Illinois is in accordance with the requirements of section 274o of the Act and meets the NRC criteria for an amended agreement. The State's statutes, regulations, personnel, and licensing, inspection, and administrative procedures are compatible with, or more stringent than, those of the Commission and are

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adequate to protect the public health and safety with respect to the materials covered by the proposed amendment to the Agreement.

Dated at Rockville, Maryland, this 23d day of March 1990.

For the U.S. Nuclear Regulatory Commission.

Fred Combs,

Acting Director, State Programs, Office of Governmental and Public Affairs.

Appendix A--Proposed Amendment Number One to the 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 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,

*14537 Whereas, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1987, ch. 111 1/2, par. 216b and ch. 111 1/2; par., 241-19 to enter into this Agreement with the Commission; and,

Whereas, on June 1, 1987, an Agreement between the Commission and the State of Illinois became effective which transferred regulatory authority over byproduct material as defined in section 11.e(1) of the act, source materials, special nuclear materials in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons; and,

Whereas, Article III of that Agreement provides that the Agreement may be amended, upon application by the State and approval by the Commission, to include the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material; and,

Whereas, Governor of the State of Illinois certified on 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 extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, the Commission found on that the program of the State for the regulation of the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material 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

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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 Amendment Number One to the Agreement; and,

Whereas, Amendment Number One to the 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:

1) Article I of the Agreement is hereby amended to expand the scope of the Agreement to include the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act. As amended, Article I now reads 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 11e.(1) of the Act;
- B. Source materials;
- 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.

Pursuant to Article III, and subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Amendment Number One to 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:

- E. The extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in section 11e.(2) of the Act.

2) Article II of the Agreement is hereby amended by inserting "A." before "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., by deleting paragraph E., relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B., relating to authorities that will be retained by the Commission. As amended, Article II now reads as follows:

Article II

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

- 1. The construction and operation of any production or utilization facility;
- 2. The export from or import into the United States of byproduct, source, or

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special nuclear material, or of any production or utilization facility;
3. The disposal into the ocean or sea of byproduct, source, or special nuclear waster materials as defined in regulations or orders of the Commission; and,
4. The disposal of such other byproduct, source, or special nuclear materials 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.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Atomic Energy 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, and ownership of such byproduct material and of land used as a 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 license shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials 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);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to paragraph 2.b. of 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 the public health, safety, welfare, or the environment;

d. 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. of 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;

e. The authority to require the Secretary of the 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 the public health and safety, and other actions as the Commission deems necessary; and,

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance of such disposal sites 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.

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3) Article IX of the Agreement is hereby amended by redesignating it Article X and by inserting a new Article IX. As amended, Articles IX and X now read as follows:

Article IX

In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in the 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 *14538 arrangements for the reclamation or long-term surveillance 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 which 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 State 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 surveillance of such byproduct material and its disposal site.

Article X

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 VIII.

4) The Agreement effective June 1, 1987 remains in effect except as modified by amendments contained in Paragraphs 1), 2), and 3) of this Amendment Number One.

5) This Amendment Number one to the June 1, 1987 Agreement shall become effective on , and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this day of .

For the United States Nuclear Regulatory Commission.

--

Chairman.

Done at Springfield, Illinois, in triplicate, this day of .

For the State of Illinois.

--

Governor.

[FR Doc. 90-7198 Filed 3-27-90; 8:45 am]

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NOTICES

NUCLEAR REGULATORY COMMISSION

State of Illinois; Staff Assessment of Proposed Amendment Number One to
 the Agreement Between the Nuclear Regulatory Commission and the State of
 Illinois

Wednesday, April 18, 1990

Note: This document was originally published on March 28, 1990, at 55 FR 11459.
 It is republished at the request of the issuing agency.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Proposed Amended Agreement with State of Illinois.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment the NRC staff assessment of a proposed amendment to the existing section 274b agreement between the NRC and the State of Illinois which became effective June 1, 1987. The request dated April 11, 1989 from Governor James R. Thompson of the State of Illinois, if approved, would permit Illinois to regulate byproduct materials as defined in section 11e.(2) of the Atomic Energy Act, as amended, (uranium or thorium mill tailings) in conformance with the requirements of section 2740 of the Atomic Energy Act of 1954, as amended (the Act).

A staff assessment of the State's proposed radiation control program to implement the amended agreement is set forth below as supplementary information of this notice. A copy of the complete program description submitted by Illinois, including a program statement prepared by the State describing the State's proposed program for control over byproduct materials as defined in section 11e.(2) of the Act, State legislation, and Illinois regulations, is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC, the Commission's Region III Office at 799 Roosevelt Road, Building No. 4, Glen Ellyn, Illinois, and the Illinois Department of Nuclear Safety at 1035 Outer Park Drive, Springfield, Illinois. Exemptions from and reservations of the Commission's regulatory authority, which would implement this proposed amendment to the existing 274b agreement, 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 Regulations.

DATES: Comments must be received on or before April 27, 1990.

ADDRESSES: Submit written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, Maryland from 7:45 a.m. to 4:15 p.m. Monday through Friday. Copies

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of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, Assistant Director for State Agreements Program, U.S. Nuclear Regulatory Commission, Washington, DC.
 Telephone: 301-492-0326.

SUPPLEMENTARY INFORMATION: Assessment of proposed amended Illinois Program to regulate certain radioactive materials pursuant to section 274 of the Atomic Energy Act of 1954, as amended (the Act).

The Commission has received a proposal from the Governor of Illinois for the State to amend its agreement with the NRC whereby the NRC would relinquish and the State would assume regulatory authority for byproduct material, as defined in section 11e.(2) of the Act, pursuant to section 274 of the Act.

Section 274e of the Act requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the Federal Register.

I. Background

A. Section 274 of the Act provides a mechanism whereby the NRC may transfer to the State certain regulatory authority over agreement materials [FN1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

FN1 A. Byproduct materials as defined in 11e.(1).

B. Byproduct materials as defined in 11e.(2).

C. Source materials; and

D. Special nuclear materials in quantities not sufficient to form a critical mass.

The Uranium Mill Tailings Radiation Control Act of 1978 amended the requirements of section 274 of the Atomic Energy Act, by adding section 274o which imposed certain requirements that must be met by Agreement States in order to regulate uranium and thorium mill tailings after November 8, 1981.

B. On May 18, 1987, the Governor of Illinois signed an agreement with the NRC for the assumption of regulatory authority for byproduct material as defined in section 11e.(1) of the Act, source material, special nuclear material in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons. This agreement became effective on June 1, 1987. In a letter dated April 11, 1989, Governor James R. Thompson of the State of Illinois requested that the Commission enter into an amended agreement with the State pursuant to section

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274 of the Act under which the State would assume responsibility for regulating uranium and thorium mill tailings (11e.(2) byproduct material) and the operations that generate such material. The Governor certified that the State of Illinois has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed amendment to the agreement, and that the State of Illinois desires to assume regulatory responsibility for such materials. The text of the proposed amendment to the agreement is shown in Appendix A.

The specific authority requested is for source material recovery activities including the uranium and thorium mill tailing (byproduct material as defined in section 11e.(2) of the Act). The proposed amendment to the agreement covers the following areas:

1. Amending Article I of the Agreement of May 18, 1987 to add the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting by product material as defined in section 11e.(2) of the Act to the list of materials covered by the agreement.

2. Amending Article II of the Agreement of May 18, 1987 by inserting *14529 "A." before "This Agreement," by redesignation paragraphs A. through D. as subparagraphs 1. through 4., by deleting paragraph E. relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B. relating to authorities pertaining to byproduct as defined in section 11e.(2) of the Act that will be retained by the Commission.

3. Amending Article IX by redesignating it Article X and by inserting a new Article IX which requires compliance with 274o of the Act and specifies certain financial surety requirements in subparagraphs A. and B.

4. States that the Agreement of May 18, 1987 remains in effect except as modified by the above amendments.

5. Specifies the effective date of Amendment Number One.

The State has no active uranium or thorium mills processing ore for its source material content. However, one facility exists under an NRC license at West Chicago, Illinois. This mill began operation in 1931 to process ore containing thorium and rare earth metals.

Kerr-McGee Chemical Corporation (Kerr-McGee) acquired the facility in 1967 and operated it until closing the plant in 1973. In 1979 Kerr-McGee submitted a plan to the NRC for decommissioning the West Chicago site and stabilizing the accumulated waste and tailings. The plan was modified and the most recent version submitted to NRC in 1986. Besides onsite wastes and ore residuals, wastes are known to exist offsite as well. On August 5, 1988, the Commission issued a decision on the regulatory aspects of the radiologically contaminated material on and offsite. The Commission held: (1) The radiologically contaminated material in and along Kress Creek and the West Branch of the DuPage River was 11e.(2) byproduct material and, therefore, not within the scope of the section 274b agreement into which the Commission entered with Illinois in 1987, and remained within the regulatory authority of the Commission; and (2) the radiologically contaminated material in Reed-Keppler Park and certain residential areas of DuPage County, and the radiologically contaminated material returned from the West Chicago Sewage Treatment Plant and residential areas within the City of West Chicago to the West Chicago Rare Earths Facility Site,

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was source material that is within the scope of the agreement and was, therefore, under the regulatory authority of the State of Illinois.

In rendering this decision, the Commission upheld the position that the thorium-contaminated materials described in (2) above should be classified as source material. It further held that the thorium-contaminated material in Kress Creek should be classified as 113.(2) byproduct material. Consequently, in order for the State of Illinois to regulate the latter, the State of Illinois would need to have its existing Agreement amended to demonstrate compliance with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. Details relating to the Rare Earths Facility are contained in the Final Environmental Statement (NUREG-0904, 1983) and the Supplement to the Final Environmental Statement (NUREG-0904, Supplement No. 1, 1989) related to the decommissioning of the Rare Earths Facility, West Chicago, Illinois.

On February 13, 1990, the Atomic Safety and Licensing Board (Licensing Board) issued a decision directing the staff to issue a license amendment authorizing Kerr-McGee to dispose of the 11e.(2) byproduct material as proposed by Kerr-McGee in its application. The staff issued the amendment on February 23, 1990. The State of Illinois and the City of West Chicago each filed a Notice of Appeal before the Atomic Safety and Licensing Appeal Board (Appeal Board). The State of Illinois and the City of West Chicago also requested the Appeal Board to stay the Licensing Board's decision. The Appeal Board issued an Order on March 13, 1990 denying the State's and the City's requests for a stay.

C. Ill. Rev. Stat. 1985, ch. 127, par. 63b17, the enabling statute for the Illinois Department of Nuclear Safety (IDNS) and Ill. Rev. Stat. 1987, ch. 111 1/2, par. 211-229, the Illinois Radiation Protection Act authorize the Department to issue licenses to, and perform inspections of, users of radioactive materials under the Agreement and otherwise carry out a total radiation control. Illinois regulations for radiation protection were adopted on September 25, 1986 under authority of the enabling statute and provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. These standards and procedures became effective on June 1, 1987, the effective date of the Agreement. As amended by P.A. 85-1160, effective August 5, 1988, the Illinois Radiation Protection Act authorizes the IDNS to regulate byproduct material as defined in section 11e.(2) of the Act. To provide for licensing of 11e.(2) byproduct material and source material recovery facilities which generate 11e.(2) byproduct material, a new Part 332 has been added to the Illinois Administrative Code (32 Ill. Adm. Code 332). These regulations were finalized on January 4, 1990 and will become effective when the Amendment Number One becomes effective. On February 6, 1990, Kerr-McGee sought judicial review of the final regulations in the Illinois courts (Kerr-McGee Chemical Corp. v. IDNS, No. 90MR49; Ill. Cir. Ct., Sangmon County). This proceeding is still pending.

On January 10, 1990, the Illinois General Assembly Joint Committee on Administrative Rules (JCAR) met and issued 13 objections to the final regulations for source material recovery and 1e.(2) byproduct material (32 Ill. Adm. Code 332). These objections were published in the Illinois Register on February 2, 1990. In accordance with Section 7.07 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1007.07), IDNS has 90 days to respond to the objections and, if IDNS does not respond within 90 days, the lack of response will constitute a refusal to amend or

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repeal this rule. Unless the JCAR drafts and introduces legislation requiring IDNS to implement the recommendations, no further actions are required of IDNS.

D. On June 1, 1987, Illinois assumed regulatory authority for (1) byproduct material as defined in section 11e.(1) of the Act, (2) source material, (3) special nuclear material in quantities not sufficient to form a critical mass, and (4) permanent disposal of low-level radioactive waste containing one or more of the foregoing materials but not containing uranium and thorium mill tailings (byproduct material as defined in section 11e.(a) of the Act). The program audits conducted since that time have resulted in NRC findings that the Illinois radiation control program is compatible with that of the NRC and is adequate to protect public health and safety.

Illinois is one of two States with a cabinet-level agency devoted exclusively to radiation safety and control. Illinois' role in radiation safety is traceable to 1955 when the Illinois General Assembly created the Atomic Power Investigating Commission. The Illinois Department of Nuclear Safety Program provides a comprehensive program encompassing radiation protection regulations for radioactive materials and machine produced radiation, lasers, low-level radioactive waste management, surveillance of transportation of radioactive materials and environmental radiation, coordination of State government *14530 functions concerning nuclear power and emergency preparedness.

E. The proposed amendment to the Illinois agreement will cover the regulation of source material extraction from ores processed primarily for their source material content and the management and disposal of the resulting tailings and other wastes (byproduct material as defined in section 11e.(2) of the Act). The State's proposed program for the regulation of source material extraction and 11e.(2) byproduct material is assessed under Criteria 29 through 36 of the guidelines published by NRC, Criteria for Guidance of States and NRC is Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement. 2 These criteria are specifically identified as "Additional Criteria for States Regulating Uranium or Thorium Processors and Wastes Resulting Therefrom After November 8, 1981" and addressed the Statutes, Regulations, Organizational Relationships Within the States, Personnel, Functions To Be Covered, and Instrumentation. Prior evaluation of the Illinois program in accordance with Criteria 1 through 28, was addressed in the staff assessment of the original Illinois proposed agreement published in the Federal Register on January 21, 1987 (52 FR 2309-2324).

II. NRC Staff Assessment of the Proposed Illinois' Radiation Control Program for Control of Uranium and Thorium Processors and the Waste Resulting Therefrom

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement. [FN2]

FN2 NRC Statement of Policy published in the Federal Register January 23, 1981 (46 FR 7540-7546), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the Federal Register July 21, 1983 (48 FR 33376).

A. Statutes

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29. State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements of Public Law 95-604, Uranium Mill Tailings Radiation Control Act, as amended (UMTRCA).

Based on the analysis of the State's revised statutes, regulations, and the State's program statement, the staff concludes that the Illinois Radiation Protection Act and the State's implementing regulations provide adequate authority for Illinois to regulate section 11e.(2) byproduct material in accordance with the requirements of the Uranium Mill Tailings Radiation Control Act, as amended. The Radiation Protection Act requires the IDNS to provide, by rule or regulation, standards for the protection of the public health and safety and the environment that are equivalent, to the extent practicable, or more stringent than, the standards adopted and enforced by NRC for 11e.(2) byproduct material, including standards issued by the Environmental Protection Agency (EPA). The Illinois Radiation Protection Act also authorizes IDNS to require licensees to provide adequate financial surety to assure that all of the IDNS requirements for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in connection with the generation or disposal of section 11e(2) byproduct material have been met. Authority is also provided to transfer to the Federal government funds which have been collected by the State for long-term surveillance and maintenance if custody of the byproduct material and its disposal site is transferred to the Federal government. Provisions of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1005) and Illinois regulations (32 Ill. Adm. Code Parts 200 and 332) implement the procedural requirements for the issuance of licenses and rules prescribed in sections 274o(3) (A) and (B) of the Act, and identified in Criterion 29d., e., and g. These requirements relate to such matters as opportunity for written comments, public hearings, cross examination, and judicial review.

Reference: Ill. Rev. Stat. 1985, ch. 127, par. 63b17 and 1005; Ill. Rev. Stat. 1987, ch. 111 1/2, par. 211-229, as amended by P.A. 85-1160; 32 Ill. Adm. Code Parts 200 and 332.

30. In the enactment of any supporting legislation, the State should take into account the reservations of authority to the Commission UMTRCA as stated in 10 CFR 150.15a.

The staff has reviewed the Illinois Radiation Protection Act, as amended, and has determined that these reservations of authority to the Commission are incorporated in the Illinois statute and are adequately discussed in the program statement.

References: Ill. Rev. Stat. 1987, ch. 111 1/2, par. 211-229, as amended; Illinois Program Statement: Application to Amend the Agreement Between Illinois and the U.S. Nuclear Regulatory Commission.

31. Section 274o(3)(C) of the Act requires that in the licensing and regulation of ores processed primarily for their source material content and for the disposal of the resulting byproduct material, States shall establish procedures which provide a written analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:

- a. An assessment of the radiological and nonradiological public health impacts;
- b. An assessment of any impact on any body of water or groundwater;
- c. Consideration of alternatives to the licensed activities; and,