

State of Wisconsin: Discontinuance of Certain Commission Regulatory Authority Within the State.

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of Agreement with the State of Wisconsin.

**SUMMARY:** On July 1, 2003, Dr. Nils J. Diaz, Chairman of the U.S. Nuclear Regulatory Commission (NRC) signed an Agreement and on July 3, 2003, Governor Jim Doyle of the State of Wisconsin signed the Agreement as authorized by Section 274b of the Atomic Energy Act, as amended (Act). The Agreement provides for the Commission to discontinue its regulatory authority over source, byproduct materials as defined in Section 11e.(1) of the Act and special nuclear materials (in quantities not sufficient to form a critical mass) in the State of Wisconsin, and for Wisconsin to assume the regulatory authority. Under the Agreement, a person in Wisconsin possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the Federal Register and are codified in the Commission's regulations as 10 CFR Part 150. The Agreement is published here as required by Section 274e of the Act.

**FOR FURTHER INFORMATION CONTACT:** Lloyd A. Bolling, Office of State and Tribal Programs, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-2327 or email [LAB@NRC.GOV](mailto:LAB@NRC.GOV).

The draft Agreement was published in the Federal Register for comment once a week for four consecutive weeks (see, e.g. 68 FR 17090, April 8, 2003) as required by the Act. The public comment period ended on May 8, 2003. A total of two comment letters were received and were considered by the NRC staff. After considering the comments, the request for an Agreement by the Governor of Wisconsin, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Wisconsin Department of Health and Family Services, Division of Public Health, the NRC staff completed an assessment of the Wisconsin program. Based on the staff's assessment, the Commission determined on June 30, 2003, that



**Agreement Between The United States Nuclear Regulatory Commission and The State of Wisconsin 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 Wisconsin is authorized under s. 254.335 (1), Wisconsin Statutes, to enter into this Agreement with the Commission; and,

Whereas, the Governor of the State of Wisconsin certified on August 21, 2002, that the State of Wisconsin (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory authority for such materials; and,

Whereas, the Commission found on June 30, 2003 that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

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

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

Whereas, this Agreement is entered into pursuant to the provisions of the Act: Now, Therefore, It is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

#### ARTICLE I

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

- A. Byproduct materials 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.

#### ARTICLE II

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

- A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
- B. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
- C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material wastes as defined in the regulations or orders of the Commission;

- D. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;
- E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
- F. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons;
- G. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

### ARTICLE III

With the exception of those activities identified in Article II, paragraphs A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include the additional areas specified in Article II, paragraphs E, F and G, whereby the State can exert regulatory authority and responsibility with respect to those activities and materials.

### ARTICLE IV

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

### ARTICLE V

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

#### ARTICLE VI

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

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

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

#### ARTICLE VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement state. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

#### ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of

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

ARTICLE IX

This Agreement shall become effective on August 11, 2003, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Dated at Rockville, Maryland, in triplicate, this 1<sup>st</sup> day of July, 2003.

FOR THE UNITED STATES NUCLEAR  
REGULATORY COMMISSION

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Nils J. Diaz, Chairman

Dated at Madison, Wisconsin, in triplicate, this 3<sup>rd</sup> day of July, 2003.

FOR THE STATE OF WISCONSIN

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Jim Doyle, Governor