

NUCLEAR REGULATORY COMMISSION

State of Utah: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Amendment to Agreement Between the Nuclear Regulatory Commission and the State of Utah

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Amendment to the Agreement Between NRC and the State of Utah.

SUMMARY: This notice is announcing that on July ??, 2004, Dr. Nils J. Diaz, Chairman of the U.S. Nuclear Regulatory Commission (NRC) and on July ??, 2004, Governor Olene S. Walker of the State of Utah signed an amendment to the Agreement between the NRC and the State of Utah as authorized by section 274b of the Atomic Energy Act of 1954, as amended (Act). The amendment to the Agreement provides for the Commission to discontinue its regulatory authority and for Utah to assume regulatory authority over the possession and use of byproduct material as defined in section 11e.(2) of the Act. Under the amendment to the Agreement, a person in Utah possessing this material is exempt from certain Commission regulations. The exemptions have been previously published in the Federal Register (FR) and are codified in the Commission's regulations at 10 CFR Part 150. The amendment to the Agreement (Appendix A) is published as required by section 274e of the Act.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sollenberger, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-2819 or e-mail DMS4@nrc.gov.

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SUPPLEMENTARY INFORMATION: The draft amendment to the Agreement was published in the Federal Register (FR) for comment once a week for four consecutive weeks (see e.g., 69 FR 7026; February 12, 2004) as required by the Act. The public comment period ended on March 15, 2004. The Commission received one comment letter (ML040780577 and ML040780567) which was addressed by the NRC staff. The commenter raised questions on Utah's adoption of the NRC policy allowing alternate feed materials to be processed at uranium mills, on proceeding with the amendment to the Agreement while the Commission is considering the proposed alternative groundwater standards, and on several other issues dealing with specific NRC past actions and what approach Utah should take in the future in implementing the amendment to the Agreement. The NRC staff analyzed these comments and prepared responses to them (ML041940326). The NRC staff determined that the comments received do not affect the NRC staff's assessment which finds the Utah 11e.(2) byproduct materials program adequate to protect public health, safety, and environment, and compatible with the NRC's program. Thus, Utah meets NRC's criteria for an Agreement for 11e.(2) byproduct material. The proposed Utah amendment to the Agreement is consistent with Commission policy and thus, meets the criteria for an 11e.(2) amendment to the Agreement with the Commission.

After considering the request for an amendment to the Agreement by the Governor of Utah, the supporting documentation submitted with the request for the amendment to the Agreement, and the interactions with the staff of the Utah Division of Radiation Control, Department of Environmental Quality, the NRC staff completed an assessment of the Utah 11e.(2) byproduct materials program. A copy of the NRC staff assessment was made available in the NRC's PDR and electronically on NRC's web site. Based on the documents submitted by

Utah, the NRC staff's analysis of comments, and the NRC staff's assessment, the Commission determined on July ??, 2004, that the proposed Utah 11e.(2) byproduct material program is adequate to protect public health, safety, and the environment, and that it is compatible with the Commission's program.

Documents referred to in this notice and other publicly available documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this day of August, 2004.

For the Nuclear Regulatory Commission.

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

APPENDIX A

AMENDMENT TO AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE STATE OF UTAH 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) entered into an Agreement on March 29, 1984 (hereinafter referred to the Agreement of March 29, 1984) with the State of Utah under Section 274 of the Atomic Energy Act of 1954, as amended (hereafter referred to the Act) which became effective on April 1, 1984, 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 Section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

WHEREAS, the Commission entered into an amendment to the Agreement of March 29, 1984 (hereinafter referred to as the Agreement of March 29, 1984, as amended) pursuant to the Act providing for discontinuance of regulatory authority of the Commission with respect to the land disposal of source, byproduct, and special nuclear material received from other persons which became effective on May 9, 1990; and

WHEREAS, the Governor requested, and the Commission agreed, that the Commission reassert Commission authority for the evaluation of radiation safety information for 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; and

WHEREAS, the Governor of the State of Utah is authorized under Utah Code Annotated 19-3-113 to enter into this amendment to the Agreement of March 29, 1984, as amended, between the Commission and the State of Utah; and

WHEREAS, the Governor of the State of Utah has requested this amendment in accordance with Section 274 of the Act by certifying on January 2, 2003 that the State of Utah has a program for the control of radiological and non-radiological hazards adequate to protect the public health and safety and the environment with respect to byproduct material as defined in Section 11e.(2) of the Act and facilities that generate this material and that the State desires to assume regulatory responsibility for such material; and

WHEREAS, the Commission found on [date] that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of the Act and in all other respects compatible with the Commission's program for the regulation of byproduct material as defined in Section 11e.(2) 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 the State and the Commission programs for protection against hazards of radiation will be coordinated and compatible; and

WHEREAS, this amendment to the Agreement of March 29, 1984, as amended, 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:

Section 1. Article I of the Agreement of March 29, 1984, as amended, is amended by adding a new paragraph B and renumbering paragraphs B through D as paragraphs C through E. Paragraph B will read as follows:

“B. Byproduct materials as defined in Section 11e.(2) of the Act;”

Section 2. Article II of the Agreement of March 29, 1984, as amended, is amended by deleting paragraph E and inserting a new paragraph E to implement the reassertion of Commission authority over sealed sources and devices to read:

“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.”

Section 3. Article II of the Agreement of March 29, 1984, as amended, is amended by numbering the current Article as A by placing an A in front of the current Article language. The subsequent paragraphs A through E are renumbered as paragraphs 1 through 5. After the current amended language, the following new Section B is added to read:

“B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that resulted 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 of Utah 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 2.b. in this Section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended, provided that the Commission determines that such use would not endanger 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. in this Section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the 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 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.”

Section 4. Article IX of the 1984 Agreement, as amended, is renumbered as Article X and a new Article IX is inserted to read:

“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 byproduct material, the State shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation and or long-term surveillance and maintenance of such byproduct material:

- A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such byproduct material and its disposal site is transferred to the United States upon termination of the State license for such byproduct material or any activity that results in the production of such byproduct material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

- B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.”

This amendment shall become effective on [insert date] and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984, as amended.

Done at Rockville, Maryland, in triplicate, this [day] day of [month, year].

FOR THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

Nils J. Diaz, Chairman

Done at Salt Lake City, Utah, in triplicate, this [day] day of [month, year].

FOR THE STATE OF UTAH

Olene S. Walker, Governor