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Request for Seed Money for State of Oklahoma Seeking 274b Agreement  
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Taylor,J.M.  
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<D<3005>>SRM 940415</D>  
-SECY\_REF-  
<D<2924>>SECY-R-75-113</D>  
-TEXT-  
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March 28, 1994                            SECY-94-088

FOR:    The Commissioners

FROM: James M. Taylor /s/  
Executive Director for Operations

SUBJECT: REQUEST FOR SEED MONEY FOR STATE SEEKING 274b AGREEMENT

PURPOSE:

To provide the Commission with a proposed response to the State of Oklahoma on its request for the NRC to provide seed money to aid the State in preparing for a Section 274b agreement.

SUMMARY:

The NRC has provided assistance to the States under authority given to it by Section 274i of the Atomic Energy Act of 1954, as amended (AEA), for State participation in certain training programs, workshops and topical seminars. This assistance has extended to paying travel and per diem expenses to State personnel to attend these sessions. The Office of State Programs (OSP) has received a request from the State of Oklahoma for a grant of funds for the purpose of preparing for the assumption of Agreement State status and the initial implementation of the Agreement State program. This paper analyzes the Commission's legal authority to provide such funding, reviews past Commission and staff consideration of the seed money question and proposes a response which denies the State's request.

BACKGROUND:

The State of Oklahoma is considering entering into an agreement with the NRC for the purpose of regulating radioactive materials as provided by Section 274b of the AEA. Mark S. Coleman, Executive Director of the Oklahoma Department of Environmental Quality, requested in a January 3, 1994 letter (Attachment 1) to Richard L. Bangart, Director, Office of State Programs, that the NRC consider the possibility of providing the State with a grant

Contact:  
Spiros Droggitis  
504-2367

of funds for the purpose of preparing for the assumption of the agreement program and the initial implementation of the program. The State believes that it does not have adequate funds from either State appropriated funds or permit fees to cover the costs of new staff members necessary to prepare for an Agreement, which entails drafting and passage of enabling legislation, promulgating regulations, developing procedures and obtaining requisite technical equipment. Based on discussions with State of Oklahoma officials, NRC staff estimates that these additional costs could be as much as \$1 million.

## LEGAL AUTHORITY

Section 274i of the AEA states that:

"...The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any such State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection b."

Currently, the assistance provided to the States by NRC under this authority extends to certain training programs, workshops and topical seminars, and NRC pays travel and per diem costs of State personnel to attend. Although the Commission has the authority under Section 274i of the AEA to provide training and assistance to States, the legislative history of Section 274i, as contained in the Joint Committee on Atomic Energy report of the bill, specifically states that "... it is not intended that a cash grant shall be provided to pay for the administration of States' regulatory programs." The report also states that "[i]t is anticipated that training, consulting and similar arrangements may be made by the Commission to reimburse State or state employees for expenses, or pay salaries of such employees while associated with the AEC." Based on this, the Commission has interpreted its role as not extending to the provision of funds for the administration of an existing Agreement State program. Section 274i does not, however, prohibit the Commission from providing seed money to support a State's up-front efforts to comply with NRC criteria to qualify for Agreement State status as long as this seed money does not cover the cost of administering the program. The position of

the Office of the General Counsel is that direct funding for certain development costs for a State attempting to become an Agreement State is permissible under Section 274 of AEA, if as a policy matter the Commission decides to provide such funding, and if appropriated funds are available for that purpose.

#### PAST CONSIDERATION OF SEED MONEY ISSUE

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The question of the NRC providing seed money to States has been examined over the years by the Commission, the staff and others.

In 1974, the Atomic Energy Commission (AEC) staff recommended in <D<2924>>SECY-R-75-113</D> that: "The AEC should seek funds to support a pilot "seed money" program with three or four non-Agreement States in order to improve their radiological health programs and permit them to become Agreement States." The AEC staff estimated that approximately \$200,000 per year would be required over a four year period to implement the pilot program. The AEC did not take action on this recommendation because of the passage of the Energy Reorganization Act in 1974. In 1976, the Nuclear Regulatory Commission requested that the NRC staff undertake a critical assessment of the State Agreement Program. A Task Force Report (NUREG-0388) recommended that "the Commission seek authority from Congress to provide limited funds to those States which are working actively toward Agreement status." The Task Force recommended seeking a sum not exceeding \$5 million over a period of five years. Draft legislation seeking such authority was drafted by the staff, but it appears that it was never submitted to the Congress for its consideration.

In 1983, the National Governors' Association (NGA) published a report of its study of the NRC Agreement State program (SECY-83-46). In calling the NRC Agreement State program an outstanding example of a successful Federal/State partnership, the NGA recommended its expansion. To this end, the NGA report recommended that NRC develop a seed money program. In response to this recommendation, OSP conducted a study to explore the feasibility of a seed money program. Based on the OSP study, the staff was preparing to recommend that the Commission approve staff plans to implement a seed money program for States seeking Section 274b agreements. This effort, however, was abandoned by the staff in 1984 and no recommendation was ever made to the Commission.

As a result, Commission practice has been not to provide seed money to States seeking Section 274b agreements.

## DISCUSSION:

As discussed above, direct funding for certain development costs for a State seeking to become an Agreement State is permissible under Section 274i of AEA. However, the Commission has not provided seed money to States. The question then becomes whether the Commission should modify its position to provide such funding if appropriated funds are available for that purpose.

### EQUITY ISSUE

The Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508 (OBRA-90), as amended, requires that the NRC recover approximately 100 percent (except the amount appropriated from the Department of Energy-administered Nuclear Waste Fund) of its budget authority by assessing fees to NRC applicants and licensees. A major concern identified in SECY-93-342, "IMPLEMENTATION OF THE ENERGY POLICY ACT OF 1992 REQUIREMENT TO REVIEW NRC FEE POLICY" was that not all direct beneficiaries of NRC activities pay fees because they are not NRC licensees. Therefore, to recover 100 percent of the budget, some NRC licensees pay for activities that do not benefit them. Examples of this were the NRC oversight of the Agreement State program and that portion of the NRC material regulatory program which supports Agreement State licensees, yet only NRC licensees pay fees to recover the costs of these activities.

The staff believes that the current unfair situation as it relates to NRC licensees paying fees for Agreement States activities would become worse if NRC were to provide non-Agreement States seed money to become Agreement States. Under the present law (OBRA-90), providing seed money derived from license fees to States to become Agreement States would exacerbate the concerns of NRC licensees. As more States become Agreement States, there would be fewer NRC licensees who would be expected to shoulder a greater financial burden of funding the NRC materials program that supports both NRC and Agreement State licensees. Thus, NRC could be accused of requiring NRC licensees to provide the seed money which would cause NRC licensee future fees to increase.

Additionally, the potential exists for additional Agreement States to be approved by the NRC in the near future. Pennsylvania, Massachusetts, Ohio, as well as Oklahoma, are considering becoming Agreement States. Providing seed money to one State would set a precedent for providing this type of funding to all States seeking Agreement State status.

For the above reasons, the staff does not believe it would be appropriate to consider providing seed money to States as long as the funds derive from license fees. If Congress agrees to remove funding of Agreement State activities from license fees as was recommended in the Fee Policy Review, then it may be appropriate to reconsider the seed money proposal and request specific funds in the budget.

**COORDINATION:**

The Office of the General Counsel has reviewed this paper and has no legal objection.

**RECOMMENDATION:**

That the Commission approve the attached letter (Attachment 2) to Oklahoma which denies their request for seed money.

James M. Taylor  
Executive Director for Operations

Attachments:  
As stated

INSERT ENCLOSURE HERE

Mark S. Coleman, Executive Director  
State of Oklahoma  
Department of Environmental Quality  
1000 Northeast Tenth Street  
Oklahoma City, OK 73117-1212

Dear Mr. Coleman:

This is in response to your January 3, 1994 letter in which you requested that the U. S. Nuclear Regulatory Commission (NRC) consider the possibility of providing your Department with a grant of funds for the purpose of preparing for the assumption of a Section 274b agreement and the initial implementation of the program.

The Commission policy has been to assist States interested in entering into Section 274b agreements by providing the State with all the necessary information on becoming an Agreement State. This assistance includes meeting with the appropriate State officials and providing model State acts for enabling and regulatory legislation. NRC also provides assistance for State participation, including travel and per diem expenses, in NRC-sponsored training courses. However, it has been a consistent and long standing Commission policy not to provide seed money grants to support preparations of an Agreement State program.

The Commission is reluctant to change this policy now. Currently, NRC is statutorily required to recover approximately 100 percent of its budget authority by assessing fees to NRC applicants and licensees. One result of this is that some licensees (e.g., non-Agreement State licensees) pay for NRC activities that do not benefit them (e.g., NRC's oversight of the Agreement State program). Providing seed money to States would exacerbate this inequity because the seed money would need to be recovered by higher fees incurred on these same licensees. If Congress agrees to remove funding of Agreement State activities from license fees as was recommended in the NRC staff Fee Policy Review (SECY-93-342, attached), then it may be appropriate to reconsider the seed money proposal and request specific funds in the budget.

Although we will not be able to respond favorably to your request for funds, we are pleased to know of Oklahoma's interest in becoming an Agreement State. We are committed to providing you with the necessary information on the Agreement State program and look forward to working with you and your staff.

Sincerely,

Richard L. Bangart, Director  
Office of State Programs

Attachment:  
As stated

- 5 -

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Wednesday, April 13, 1994.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Wednesday, April 6, 1994, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

S. COLEMAN  
Executive Director

DAVID WALTERS  
Governor

State of Oklahoma

DEPARTMENT OF ENVIRONMENTAL QUALITY

January 3, 1994

U.S. Nuclear Regulatory Commission  
Office of State Programs  
Washington, D.C. 20555-0001  
Attn: Richard Bangart, Director

Dear Mr. Bangart:

This is in regard to the meeting held in Oklahoma City on November 9 with you and other Commission officials to discuss the requirements for Oklahoma to become an agreement state under the Atomic Energy Act.

Let me take this opportunity to thank you, Cardelia Maupin, and Charles Hackney for meeting with Mr. Thompson and others from this department. We are most appreciative for the help provided in getting us started in this process.

This leads me to the purpose of this letter: namely, the funds which we foresee as necessary in completing the agreement-state process. At this time, we do not have adequate funds from either state appropriated funds or permit fees to cover the costs of new staff members necessary to implement this program. Accordingly, this letter is to request that your office, and the Commission itself, consider the possibility of providing this department with a grant of funds for the purpose of preparing for the assumption of the agreement program and the initial implementation of that program.

I realize that this is an unusual request and one that will entail deliberate consideration on your part of your agency's authority to provide such a grant. However, I hope and trust that your response will be favorable.

Sincerely,

Mark S. Coleman  
Executive Director

ATTACHMENT 1

-END-