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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

September 1, 1999

The Honorable Robert W. Ney
United States House of Representatives
Washington, DC 20515

Dear Congressman Ney:

We are pleased to inform you that, pursuant to Section 274 of the Atomic Energy Act of 1954, as amended (Act), entitled "Cooperation With States," the Commission on August 4, 1999 approved an Agreement with the State of Ohio under which the State will assume certain regulatory authority over byproduct materials as defined in both Section 11e.(1) and Section 11e.(2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass. The State will also assume regulatory authority over the land disposal of wastes containing source, byproduct and special nuclear materials received from other persons.

In his June 22, 1998 request that the Commission enter into an Agreement, then Governor George V. Voinovich certified that Ohio has a program for the control of the radiation hazards associated with the materials covered by the Agreement which is adequate to protect public health and safety. Governor Voinovich further certified that the State desires to assume the regulatory responsibility for such materials.

The proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program, was published in the Federal Register for public comment as required by Section 274e of the Act. Copies of the proposal and supporting documentation were made available for inspection at the Commission's Public Document Room.

The Commission has determined that the Ohio program for the regulation of agreement materials is compatible with the Commission's equivalent program, and adequate to protect public health and safety with respect to the materials covered by the Agreement. NRC staff has identified 574 licensees that will be transferred to Ohio in whole or in part and continues to work with representatives of the Ohio program to ensure a smooth transition for both the regulator and its licensees, consistent with the agency's oversight of the Agreement State program. NRC staff will conduct periodic reviews of the Ohio program to ensure that the terms of the Agreement continue to be met. NRC will retain jurisdiction over 19 material licensees, including certain Federal facilities, exempt distribution, and two licensees authorized to possess special nuclear material. In addition, NRC will retain jurisdiction over the gaseous diffusion plant in Portsmouth and two nuclear power plants near Toledo and Painesville.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

B/1

OSP BACKGROUND MATERIAL

LETTERS SENT TO:

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D. C. 20510

cc: Senator Bob Graham

The Honorable Joe Barton, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, D. C. 20515

cc: Representative Ralph M. Hall

Ohio Congressional Delegation

Senators

The Honorable Mike DeWine
The Honorable George V. Voinovich

Representatives

The Honorable Steve Chabot
The Honorable Rob Portman
The Honorable Tony P. Hall
The Honorable Michael G. Oxley
The Honorable Paul E. Gittmor
The Honorable Ted Strickland
The Honorable David L. Hobson
The Honorable John A. Boehner
The Honorable Marcy Kaptur
The Honorable Dennis J. Kucinich
The Honorable Stephanie Tubbs Jones
The Honorable John R. Kasich
The Honorable Sherrod Brown
The Honorable Thomas C. Sawyer
The Honorable Deborah Pryce
The Honorable Ralph Regula
The Honorable James A. Traficant, Jr.
The Honorable Robert W. Ney
The Honorable Steven C. LaTourette



301-4111 Summary -> N.Y. Reg. Legislative Review

Submission of Federal Rules Under the Congressional Review Act

President of the Senate

Speaker of the House of Representatives

GAO

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency U.S. Nuclear Regulatory Commission	2. Subdivision or Office Office of State Programs
3. Rule Title Agreement with the State of Ohio	
4. Regulation Identifier Number (RIN) or Other Unique Identifier (if applicable) N/A	
5. Major Rule <input type="radio"/> Non-major Rule <input checked="" type="radio"/>	
6. Final Rule <input checked="" type="radio"/> Other <input type="radio"/>	
7. With respect to this rule, did your agency solicit public comments? Yes <input checked="" type="radio"/> No <input type="radio"/> N/A <input type="radio"/>	
8. Priority of Regulation (fill in one) <input type="radio"/> Economically Significant, or Significant, or Substantive, Nonsignificant <input checked="" type="radio"/> Routine and Frequent or Informational/Administrative/Other (Do not complete the other side of this form if filled in above.)	
9. Effective Date (if applicable) August 31, 1999	
10. Concise Summary of Rule (fill in one or both) attached <input checked="" type="radio"/> stated in rule <input type="radio"/>	

Submitted by Dennis K. Rathbun (signature)
 Name: Dennis K. Rathbun
 Title: Director, Office of Congressional Affairs 9/1/99

For Congressional Use Only
 Date Received _____
 Committee of Jurisdiction _____

Submission of Federal Rules Under the Congressional Review Act

 President of the Senate

 Speaker of the House of Representatives

 GAO

Please fill in the circles electronically or with black pen or #2 pencil.

1 Name of Department or Agency

U.S. Nuclear Regulatory Commission

2. Subdivision or Office

Office of State Programs

3 Rule Title

Agreement with the State of Ohio

4 Regulation Identifier Number (RIN) or Other Unique Identifier (if applicable)

N/A

5

Major Rule Non-major Rule

6

Final Rule Other

7 With respect to this rule, did your agency solicit public comments?

Yes No N/A

8 Priority of Regulation (fill in one)

Economically Significant, or Significant, or Substantive, Nonsignificant

Routine and Frequent or Informational/Administrative/Other
(Do not complete the other side of this form if filled in above.)

9 Effective Date (if applicable) August 31, 1999

10 Concise Summary of Rule (fill in one or both)

attached stated in rule

Submitted by Dennis K. Rathbun (signature)

Name Dennis K. Rathbun

Title Director, Office of Congressional Affairs 9/1/99

For Congressional Use Only

Date Received _____

Committee of Jurisdiction _____

U. S. NUCLEAR REGULATORY COMMISSION

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

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: Notice of Agreement with the State of Ohio.

SUMMARY: On August 11, 1999, Greta J. Dicus, Chairman of the U. S. Nuclear Regulatory Commission (NRC) and on August 18, 1999, Governor Bob Taft of the State of Ohio signed an Agreement as authorized by Section 274b of the Atomic Energy Act. The Agreement provides for the Commission to discontinue its regulatory authority over source, byproduct and special nuclear materials (in quantities not sufficient to form a critical mass) in the State of Ohio, and for Ohio to assume the regulatory authority.

Under the Agreement, a person in Ohio 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 at 10 CFR Part 150. The Agreement is published here as required by Section 274e of the Act.

FOR FURTHER INFORMATION CONTACT: Richard L. Blanton, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-2122 or e-mail RLB@NRC.GOV.

The draft Agreement was published in the Federal Register for comment once a week for four consecutive weeks (see, e.g. 64 FR 12187, March 11, 1999) as required by the Act. The public comment period ended on April 12, 1999. A total of 25 comment letters were received and were considered by the NRC staff. After considering the comments, the request for an Agreement by the Governor of Ohio, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Ohio Department of Health, Bureau of Radiological Health, the NRC staff completed an assessment of the Ohio program. Based on the staff's assessment, the Commission determined on August 4, 1999, that the proposed Ohio program for the control of radiation hazards is adequate to protect public health and safety and compatible with the Commission's program. NRC will retain jurisdiction over 19 materials licensees including certain Federal facilities and exempt distribution. In addition, NRC will retain jurisdiction over the gaseous diffusion plant in Portsmouth, Ohio and two nuclear power plants near Toledo and Painesville.

Copies of the comment analysis by the NRC staff, the staff assessment, and the Commission's decision may be viewed at the NRC website, <http://www.nrc.gov>. To view the documents, click on the "News and Information" icon, then select "Staff Papers" under the "Commission" heading. The documents are contained in the Commission paper numbered SECY-99-179.

**AN AGREEMENT
BETWEEN
THE UNITED STATES NUCLEAR REGULATORY COMMISSION
AND
THE STATE OF OHIO
FOR THE
DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY
AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO
SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED**

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Ohio is authorized under Chapter 3748. of the Ohio Revised Code to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Ohio certified on June 22, 1998, that the State of Ohio (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the health and safety of the public and to protect the environment 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 August 4, 1999 that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

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

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

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now Therefore, It is hereby agreed between the Commission and the Governor of the State of Ohio, acting on behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, III, and IV, 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. Byproduct materials as defined in Section 11e.(2) of the Act;

C. Source materials;

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

E. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons; and,

F. 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.

Article II

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

- 1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;**
- 2. 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;**
- 3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in the regulations or orders of the**

Commission;

- 4. 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.**

EI. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material 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 public health, safety, welfare, or the environment;
- d. The authority to require, in the case of a license (if any) 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.

Article III

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 IV

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 V

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 State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory

programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of 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 VI

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 VII

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 actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article VIII

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 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 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 IX

This Agreement shall become effective on August 31, 1999, and shall remain in effect unless and until such time as it is terminated pursuant to Article VII.

Done at Rockville, Maryland, in triplicate, this 11th day of August, 1999.

FOR THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

/S/ Greta Joy Dicus

Greta Joy Dicus, Chairman

Done at Columbus, Ohio, in triplicate, this 18th day of August, 1999.

FOR THE STATE OF OHIO

/S/ Bob Taft

Bob Taft, Governor

Dated at Rockville, Maryland, this ____ day of _____, 1999.

For the U. S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook
Secretary of the Commission