

August 18, 2006

The Honorable Togiola Tulafono
Governor of American Samoa
Pago Pago, American Samoa 96799

Dear Governor Tulafono:

On behalf of the U.S. Nuclear Regulatory Commission (Commission), I am requesting information regarding your plans for the regulation of certain radioactive materials. A provision of the Energy Policy Act of 2005 (EPAAct) expands the authority of the Commission to regulate radium and certain other radioactive materials, such as those made radioactive in particle accelerators. Currently, the individual States and Territories have the authority to regulate these materials.

NRC anticipates promulgating final regulations to implement its regulatory program for the new byproduct materials on February 8, 2007. A plan for the orderly transition of authority, as required by the EPAAct, is expected to be published shortly after the regulations. State Radiation Control Program Directors will be provided detailed information about the plan prior to its publication.

Since your government may be regulating these radioactive materials, you may wish to consider entering into an Agreement with the Commission under Section 274b of the Atomic Energy Act of 1954, as amended (AEA), to continue regulating these radioactive materials. Section 274b. of the AEA allows the Commission to enter into an agreement with the Governor of a State or Territory under which the Commission discontinues, and the State or Territory assumes, regulatory authority for the materials covered by the Agreement. Alternatively, by not entering into an Agreement, the Commission will assume regulatory authority for these radioactive materials under the EPAAct as described in the Enclosure. For budgetary and planning purposes, I ask that you provide the information¹ requested in the Enclosure within 30 days of your receipt of this letter, if possible.

If you or your staff have questions or need additional information, please contact Ms. Janet Schlueter, Director of the Office of State and Tribal Programs at (301-415-3340 or JRS1@NRC.GOV). The Commission appreciates your cooperation on this matter.

Sincerely,

/RA/

Dale E. Klein

Enclosure:
Information Requested
from Non-Agreement States

¹This information request has been approved by OMB 3150-0200, expiration 06/30/09. The estimated burden per response to comply with this voluntary collection is approximately 8 hours. Send comments regarding the burden estimate to the Records and FOIA/Privacy Services Branch (T-5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet e-mail to infocollects@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0029), and NEOB-10202 (3150-0200), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Identical letter sent to (for Territories):

The Honorable Togiola Tulafono
Governor of American Samoa
Pago Pago, American Samoa 96799

The Honorable Felix Camacho
Governor of Guam
Hagatna, Guam 96932

The Honorable Benigno Fitial
Governor of Northern Mariana Islands
Saipan, Northern Mariana Islands 96950

The Honorable Charles Turnbull
Governor of Virgin Islands
St. Thomas, Virgin Islands 00802

The Honorable Anibal Acevedo-Vila
Governor of Puerto Rico
San Juan, Puerto Rico 00902

For States That do not Currently Have an Agreement with the Commission

On August 8, 2005, President Bush signed the Energy Policy Act of 2005 (EPAct). Section 651 of the EPAct became effective immediately and expanded the definition of byproduct material by adding paragraphs (3) and (4) to Section 11e. of the Atomic Energy Act of 1954, as amended (AEA). This amendment gave regulatory jurisdiction over certain naturally occurring and accelerator produced radioactive materials to the Commission. Section 651(e) of the EPAct also authorizes the Commission to issue waivers of the requirements of the Section for up to four years if the Commission determines that a waiver is in accordance with the protection of the public health and safety and promotion of the common defense and security. The Commission issued a waiver on August 31, 2005 (70 FR 51581) to provide a mechanism for the NRC to permit persons to continue to use, and States to continue to regulate, the new byproduct material during the implementation of the EPAct.

Section 274b. of the AEA allows the Commission to enter into an agreement with the Governor of a State under which the Commission discontinues, and the State assumes, regulatory authority for the materials covered by the Agreement.

Under the terms of the EPAct, if a State does not have an Agreement with the Commission, which includes Section 11e. (3) and 11e. (4) byproduct materials, regulatory authority over these materials in that State must revert to the Commission not later than August 8, 2009.

For budgetary and planning purposes, the Commission is requesting the following information:

- (1) Do you anticipate requesting an Agreement with the Commission under Section 274b of the AEA to assume regulatory authority over byproduct material, including byproduct material as defined in Section 11e.(3) and 11e.(4), before August 8, 2008? (Please note that a minimum of approximately one year is required to complete the statutory requirements for an Agreement.)
- (2) If you anticipate requesting an Agreement before August 8, 2008, please indicate when you expect to submit your request for such an Agreement.
- (3) If you do not expect to request an Agreement, please confirm that you understand that the authority over these materials will transition to the NRC as required by the Energy Policy Act.

The Commission does not need detailed planning information at this time. However, we do need, for budget planning purposes, an understanding of which States intend, or do not intend to regulate Section 11e. (3) and 11e. (4) byproduct materials at this time.

Enclosure