

August 18, 2006

The Honorable Tim Kaine
Governor of the Commonwealth
of Virginia
Richmond, Virginia 23219

Dear Governor Kaine:

On behalf of the U.S. Nuclear Regulatory Commission (Commission), I am requesting information regarding the plans of your State 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 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.

The Commission is in receipt of former Governor Mark Warner's letter of December 14, 2005, expressing the intention of the Commonwealth of Virginia to enter into an agreement under Section 274b of the Atomic Energy Act to regulate certain byproduct, source and special nuclear material. 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.

For Virginia

On August 8, 2005, President Bush signed the Energy Policy Act of 2005 (EPAAct). Section 651 of the EPAAct 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. This amendment gave regulatory jurisdiction over certain naturally occurring and accelerator produced radioactive materials to the Commission. Section 651(e) of the EPAAct 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 EPAAct.

Section 274b of the Atomic Energy Act 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. The Energy Policy Act authorizes the Commission to enter into an Agreement for any or all of the materials listed in Section 11e. of the Atomic Energy Act as requested by the Governor.

Under the terms of the Energy Policy Act, 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) Former Governor Warner indicated an intent to request an Agreement with the Commission under Section 274b of the AEA to assume regulatory authority over Section 11e.(1) byproduct materials. Is it also your intention to assume regulatory authority over Section 11e.(3) and 11e.(4) byproduct materials?
- (2) If so, is it your intention to have an Agreement in effect before August 8, 2009? (Please note that a minimum of approximately one year is required to complete the statutory requirements for an Agreement.)
- (3) Please indicate when you expect to submit your request for an Agreement.

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