ADJUDICATORY ISSUE

(Affirmation)

April 9, 1991

SECY-91-093

91 APR 10 AM 8:17

For: The Commissioners

From: Harold R. Denton, Director
Office of Governmental and
Public Affairs

Subject: REASSERTION OF REGULATORY AUTHORITY IN THE STATE OF IDAHO

Purpose: To obtain Commission approval of a proposed Commission Order and Federal Register notice on reassertion of regulatory authority in Idaho.

Summary: By letter dated March 25, 1991, Governor Andrus of Idaho advised the Commission of his decision to return Idaho's Section 274b. Agreement to the NRC. This request has been made following the inability of the State to adequately fund the program at a level sufficient to meet NRC guidelines for adequacy to protect public health and safety and compatibility with the NRC program. In order to accept return of the Idaho program, as requested by the Governor, and to effect reassertion of NRC authority, Section 274j. of the Atomic Energy Act, as amended (the Act), requires a finding that it is necessary for the Commission to terminate the Agreement relinquishing NRC authority over radioactive materials subject to the Agreement and to reassert NRC licensing and regulatory authority over these materials in order to protect the public health and safety.

Discussion: Idaho became an Agreement State on October 1, 1968. After Agreement State status was achieved, the State provided adequate budgeting support for the Agreement program for many years. On November 9, 1982, Idaho

NOTE: TO BE MADE PUBLICLY AVAILABLE WHEN THE FINAL SRM IS MADE AVAILABLE

CONTACTS:
Carlton Kammerer, SP/GPA
49-20321

Vandy L. Miller, SP/GPA
49-20326

returned to the NRC authority to regulate byproduct materials as defined by Section 11e.(2) of the Atomic Energy Act, as amended (uranium mill tailings)(47 FR 50779). At the time, there were no active uranium mills in Idaho and there was one "Title I" (Department of Energy) site, located at Lowman, Idaho. Remediation of this site was the responsibility of the Department of Energy.

A staffing problem emerged in 1987 shortly following the NRC routine review of the State's program when two State health physicists left the program. Carlton Kammerer, Director, State Programs, briefly discussed the situation with Governor Andrus during a meeting of the National Governors' Association in 1988. Although the State's program met the NRC guidelines for adequacy and compatibility at the time of the review, the NRC comment letter to the State following the review expressed concern over the staff turnover. In July 1989, the State's program was reviewed and while determined to meet the NRC guidelines for adequacy and compatibility at the time of the review, again a staff resignation occurred shortly after the review. This resignation was one of the two 1987 filled positions.

In 1990, NRC performed a review visit to Idaho and found that an inspection backlog had developed and that the State had not taken steps to fill a vacant position or otherwise augment the program. State Programs (SP) notified the Director of the Department of Health and Welfare of the seriousness of our review visit findings by letter dated July 23, 1990. Region IV has closely monitored the status of the program. The Office of Governmental and Public Affairs (GPA) has been in contact with Departmental representatives, staff of the Governor's office and with the State legislature concerning State plans for the program. Attachment 1 provides details on the State's staffing of the program.

The State examined three options for the program: (1) fund the program out of general revenues, (2) establish a fee system or (3) request termination of the Agreement and NRC's reassertion of its authority in Idaho. NRC staff provided the State with information on current NRC fees and other Agreement State funding mechanisms. Idaho is one of four Agreement States that does not use fees as a funding source for the Agreement program. NRC staff

also informally provided preliminary information on Commission plans to propose rule changes to increase license and inspections fees for materials licensees and to charge an annual fee for materials licensees. This information was provided to assure that the State has all of the necessary information to make an informed decision on the future of the program. The information was provided with the understanding that until the NRC Federal Register notice was published this information was not yet available to the public. Attachment 2 is a chronology of the contacts between the NRC and the State on this matter.

By letter dated March 25, 1991, Governor Andrus advised the Commission of his decision to return Idaho's Section 274b. Agreement Program to NRC (Attachment 3).

Idaho administers about 130 specific licenses. Two are broad scope academic licenses. The remaining licensees are a normal mix of medical, industrial radiography, gauge users, etc. There are no nuclear pharmacies, low level waste (LLW) brokers, large manufacturers or large irradiators. There are no licensees subject to requirements for posting of sureties. License applications have been received by the State, however, for a nuclear pharmacy, a nuclear laundry and a distributor of tritium exit signs. NRC staff's monitoring of the State program shows that a significant inspection backlog exists.

The reassertion process requested is provided by Section 274j.(1) of the Act. This requires a Commission determination that termination of the Agreement and reassertion of NRC regulatory authority in Idaho is necessary to protect the public health and safety. Since this action has been requested by the State, the notice and opportunity for a hearing to the State that is provided for in Sec 274j.(1) is not necessary. Based upon Governor Andrus' letter and discussions with his staff, it is recommended that the effective date for the reassertion of NRC authority be April 26, 1991. Attachment 4 is a Commission order which provides that the existing State licenses in effect become NRC licenses. The proposed Federal Register notice shown in Attachment 5 would provide notice that the Commission has found termination of the Agreement to be necessary to protect the public health and safety and that reassertion of NRC authority would become effective

on a specified date. NRC staff plans to hold a public workshop with licensees in Idaho to ensure that NRC rules, fee schedules, and enforcement policies are understood. The Region has tentatively scheduled this during the week of June 3, 1991. NRC staff has been in communication with the State concerning transition arrangements including transfer of license files and other appropriate records to the Region IV office. There are no costs to be charged to the State for the termination. There will be no fee charged to Idaho licensees for the NRC order making them subject to NRC regulation. Subsequently, they will be subject to such fees as are provided by 10 CFR Parts 170 and 171.

Staff estimates that the incremental increase in technical staff effort to assume regulatory authority for the Idaho program will be 1 to 2 FTEs. A somewhat higher effort will be needed initially to address the inspection backlog, process the pending license requests, and take other licensing actions necessary to conform the licenses to NRC requirements and conduct the workshops. The magnitude of this additional effort will best be assessed after staff performs preliminary reviews of the State files.

This action terminates, rather than suspends, Idaho's Section 274b. Agreement with NRC. Should the State at some future time wish to again become an Agreement State, it may do so by requesting a new Agreement in accordance with Section 274 of the Act and the NRC Policy Statement (46 FR 7540, 46 FR 36969 and 48 FR 33376).

A draft letter to Governor Andrus informing him of the Commission's decision is shown in Attachment 6. A public announcement and Congressional letters concerning this decision are shown in Attachments 7 and 8. A letter to the Director of the Idaho Department of Health and Welfare informing him of the procedures that will be followed to terminate the Agreement is shown in Attachment 9.

Recommendation: That the Commission:

1. Find that the termination of the Section 274b. Agreement with Idaho is required to protect the public health and safety.

2. Approve the Order provided in Attachment 4 and direct the Secretary to issue such Order.

3. Approve publication of the Federal Register notice announcing the Commission decision (Attachment 5).

4. Note:

   a. The Commission Order will be published in the Federal Register along with the notice of reassertion of authority.

   b. The Governor of Idaho will be notified of the Commission decision by registered letter shown in Attachment 6.

   c. A public announcement (Attachment 7) will be issued by Public Affairs.

   d. The appropriate Congressional Committees will be informed of the Commission's decision (Attachment 8).

Coordination: This paper has been coordinated with the Office of the Executive Director for Operations, Region IV, and the Office of the General Counsel has no legal objection.

Harold R. Denton, Director
Office of Governmental and
Public Affairs

Attachments:
As Stated

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Wednesday, April 10, 1991.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Wednesday, April 10, 1991, 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.

This paper is tentatively scheduled for affirmation at an Open Meeting on Thursday, April 11, 1991 at 3:30 p.m.

DISTRIBUTION:

Commissioners	REGION IV
OGC	EDO
OIG	SECY
LSS	
GPA	

OFFICE OF THE GOVERNOR
STATE CAPITOL
BOISE 83720

CECIL D ANDRUS
GOVERNOR

(208) 334-2100

March 25, 1991

Kenneth M. Carr, Chairman
U.S. Nuclear Regulatory Commission
One White Flint North Building
11555 Rockville Park
Rockville, MD 20555

Dear Mr. Carr:

Representatives of the state of Idaho have been in contact with representatives of the Nuclear Regulatory Commission (NRC) about the NRC/state agreement program. I am writing to clear up any misunderstandings that may exist in this regard.

In recent years, the Idaho Radiation Control Program has been operated by our state Department of Health and Welfare's Division of Environmental Quality. In July of 1990, the NRC advised the state that the quality of the program was in question. I am enclosing a copy of a letter outlining the NRC's concerns.

The Idaho Legislature has reluctantly funded the program at a very minimal operating level. As you know, there are no federal funds available to the state to operate it. In view of the financial squeeze placed on the program by our Legislature's past reluctance to adequately fund it and the federal government's refusal to provide any funds, we studied the feasibility of increasing funding by implementing a fee structure for licenses and inspections. A fee program would have allowed us to upgrade our program to comply with the requirements of the NRC. We discovered that to implement such a program, however, an average license/inspection fee of approximately $1,175.00 would be required to be paid by the 136 businesses, universities, and medical facilities in Idaho that are currently licensed.

When the executive budget for fiscal year 1992 was being put together at the end of last year, it was determined that the fees charged by the NRC's own licensing

Attachment 3

and inspection program were an average of approximately $531.00 per license/inspection. Accordingly, in view of the fact that the NRC could provide a thorough licensing and inspection program at no cost to the state of Idaho and at a cost to Idaho licensees far less than what could be charged by the state, we made the decision to return this federally-mandated program to the NRC.

Just recently, the state has been notified by the NRC that it plans to revise its rules and regulations to increase the fees it currently charges to licensees and that these new fees may go into effect sometime in the next year. In the event these changes do take place, the state may be in a position to consider taking back the NRC/state agreement program. At this juncture, however, there is not a sufficient basis for me to reverse the state's decision to return the program to the NRC.

I am not entirely satisfied with this decision, because I believe that, when adequately funded, a state program is in a better position to regulate and control radioactive materials in Idaho than is the NRC. I continue to believe that the state can be more responsive to those who are protected and regulated by the program and any concerns that arise about health or safety can be dealt with more promptly at the state level. I am committed to protecting Idaho's citizens from any undue risk of exposure to radiation, but this protection cannot be achieved by an underfunded state program.

I am certain you will agree that, under the circumstances, Idaho's citizens will be best served by a strong program administered by the NRC. We look forward to continuing an excellent working relationship with you.

Sincerely,

Cecil D. Andrus
Governor

CDA:jcd
enclosure
cc: Richard P. Donovan, Idaho Department of Health and Welfare
Carlton Kammerer, Director of State Programs, Nuclear Regulatory Commission
a/f

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

July 23, 1990

Mr. Richard P. Donovan, Director
Department of Health and Welfare
450 W. State Street
Boise, ID 83720

Dear Mr. Donovan:

Because of our disturbing findings, I am providing this report to you of a recent NRC visit to the Idaho radioactive materials Agreement State program. The report highlights the inadequate manpower being devoted to the Agreement State program which has resulted in major shortcomings in the inspection area and the necessary revisions of the State's regulations for compatibility with NRC.

If this visit had been a formal review of the Idaho program, we would be unable to make a finding of either adequacy of the program to protect public health and safety or compatibility with NRC regulations. Because of the serious nature of this situation, I would like to receive a written response and plan of action to the report's findings. Finally, NRC intends to conduct an official review of the State's program within the next six months.

I believe the seriousness of these deficiencies warrant your early attention to this matter.

Sincerely,

Carlton Kammerer, Director
State Programs
Office of Governmental and Public Affairs

Enclosure:
As stated

cc: Cheryl Koshuta
State Liaison Officer

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kenneth M. Carr, Chairman
Kenneth C. Rogers
James R. Curtiss
Forrest J. Remick

In the Matter of the Governor of Idaho's request to return to the United States the Idaho program for the licensing and regulation of byproduct material as defined in Section 11e.(1) of the Atomic Energy Act of 1954, as amended, source material and special nuclear material in quantities not sufficient to form a critical mass.

ORDER

CLI-91-

Pursuant to Section 274j.(1) of the Atomic Energy Act of 1954, as amended, the Commission grants the request of the Governor of Idaho for the Nuclear Regulatory Commission to accept the return of authority over the licensing and regulation in Idaho of byproduct material as defined by Section 11e.(1) of the Atomic Energy Act of 1954, as amended, source material and special nuclear material in quantities not sufficient to form a critical mass. The Commission finds that this action is required to protect the public health and safety.

Attachment 4

Idaho is an Agreement State. Under the provisions of the Agreement, which became effective October 1, 1968, Idaho assumed and NRC relinquished authority for the licensing and regulation of byproduct material, source material and special nuclear material in quantities not sufficient to form a critical mass. On November 9, 1982, Idaho returned to the NRC authority to regulate byproduct material as defined by Section 11e.(2) of the Atomic Energy Act of 1954, as amended.

By letter dated March 25, 1991, Governor Cecil Andrus advised the Commission of his decision to return Idaho's Agreement program to the NRC. In his letter, the Governor indicated that he made this decision following a decision by the State Legislature to not fund the program for regulating radioactive materials subject to the Agreement at a level sufficient to meet NRC guidelines for adequacy to protect the public health and safety and compatibility with the NRC program. Under current Federal law, byproduct material, source material and special nuclear material in quantities not sufficient to form a critical mass cannot be left unregulated. Accordingly, the Commission finds it necessary to accept return of the Idaho program, terminate the Section 274b. Agreement between the NRC and the State of Idaho in its entirety, and reassert NRC authority over the licensing and regulation in Idaho of byproduct material, as defined in Section 11e.(1) of the Atomic Energy Act of 1954, as amended, source material and special nuclear material in quantities not sufficient to form a critical mass.

The Commission staff has reviewed the files of the Idaho Department of Health and Welfare and has identified all relevant licensing documents for transfer to the NRC. In order to aid in a smooth transition, the Commission deems it essential to maintain continuity in the licensing and regulatory obligations of the Idaho licensees whose dockets are being transferred to the NRC. This continuity may be assured by keeping in effect on an interim basis all Idaho licenses as currently issued, until such time as the licenses are modified to meet NRC standards.

Therefore, the Commission hereby orders that all Idaho issued licenses, license amendments, outstanding orders (if any), or other documents establishing obligations for specific licensees that are transferred to the Commission, shall remain in full force and effect as if issued by the Commission. The Commission staff will review all transferred licensing documents and provide for their revision as necessary to meet applicable Federal standards.

For the Commission

Secretary of the Commission

Dated at Rockville, Maryland
this day of 1991.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
Office of Governmental and Public Affairs
Washington, D.C. 20555

No. 91-39
Tel. 301/492-0240

FOR IMMEDIATE RELEASE
(Friday, April 12, 1991)

NRC TO REASSERT REGULATORY AUTHORITY IN IDAHO

The Nuclear Regulatory Commission is reasserting its regulatory authority over the possession and use of byproduct, source and special nuclear material in the State of Idaho. Governor Cecil Andrus, in a March 25 letter to the Commission, advised that Idaho could no longer carry out its responsibilities as an Agreement State due to severe budget constraints and other compelling reasons.

The action, which is effective on April 26, is being taken in order to ensure that the public health and safety will be protected.

Under a section of the Atomic Energy Act added in 1959, individual States can, by agreement, assume part of the NRC's regulatory authority over the possession and use of byproduct, source and small quantities of special nuclear material. This requires a demonstration that an adequate program is in place for the control of radiation hazards to protect the public health and safety and a Commission finding that the program is compatible with the Commission's program for regulating those materials. With the reassertion of NRC regulatory authority in Idaho, there will be 28 Agreement States.

Licensees in Idaho, which has been an Agreement State since 1968, are being advised of the Commission's action in an Order dated April 11, 1991, and the NRC staff is working with Idaho authorities to ensure an orderly transition in regulatory authority. There are approximately 130 specific licensees in Idaho affected by this action. As part of this effort, the NRC Staff will hold public workshops in the State to explain NRC rules, fee schedules and enforcement policies. In the meantime, the Idaho licenses, as currently issued, will remain in effect until they can be revised, if necessary, to meet NRC requirments.

Persons seeking new licenses for activities involving radioactive materials subject to NRC regulation in Idaho should file applications with the Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

#

INFORMATION REGARDING THE STAFFING OF THE IDAHO RADIATION CONTROL PROGRAM

Background

Idaho became an Agreement State on October 1, 1968. After Agreement status was achieved, the State provided adequate budgeting support for the Agreement Materials Program for many years. State budgetary support was necessary because Idaho has never charged fees to its licensees to support its regulatory program.

A problem with staffing developed in 1987, just after NRC's evaluation of Idaho's Agreement Materials Program on July 24, 1987. Two of the State's health physicists resigned within months of each other, and Idaho has not been able (or willing) to adequately support the Agreement Materials Program since that time.

Idaho's evaluation of July 1987 showed a staffing level of 1.5 FTE/100 licenses. (NOTE: NRC's guidelines call for a range of 1.0 - 1.5 FTE/100 licenses for these programs.) Since that time, Idaho has never achieved even the lower limit of this range. Idaho's staffing level averaged .8 - .9 FTE/100 licenses for the next several years, when, on June 1, 1990, another health physicist resignation occurred and only one person remained to cover the Agreement Materials Program. Idaho has not filled this vacancy to date.

Region IV conducted a Review Visit for the Idaho program on June 22, 1990, which highlighted the critical staffing problem and other general program deficiencies, to include a backlog of license reviews and inspections. NRC's State Programs Office notified Idaho's Director of the Department of Health and Welfare on July 23, 1990, of the seriousness of these problems. Since that time, State Programs and Region IV have maintained a weekly monitoring plan for the Idaho program. Idaho has assured NRC that adequate support exists for radiological incidents, wherein DOE's Idaho National Engineering Laboratory (INEL) has pledged support for such cases.

Idaho management staff has stated that the only solution to this problem is to receive adequate program funding from the State Legislature in the January 1991 session.

Attachment 1

Current Status

Idaho has one health physicist assigned to the Agreement Materials program, which represents a staffing level of approximately .5 - .6 FTE/100 licenses since a small fraction of his time is devoted to the x-ray program. The inspection backlog has been increasing steadily, to approximately 50-60 overdue inspections at the present time. Licensing review actions have also been building up with Idaho having several more significant cases to review; e.g., license applications for a nuclear laundry, a nuclear pharmacy, and a distributor of tritium exit signs are pending at the present time.

Idaho has no outside technical support for the program, except for radiological emergency response from DOE's INEL. Both INEL and the Conference of Radiation Control Program Directors, Inc. (CRCPD) have recently turned down Idaho's requests for technical assistance for routine program operations.

NRC has been reluctant to offer any program assistance because the State has not given a strong commitment to fund the necessary resources to run an Agreement program. After the 1987 review, when Idaho was experiencing similar problems, the NRC provided one (1) specialist for approximately two weeks to help reduce its backlog due to a shortage of staff.

Idaho's radiation control regulations were last revised in December 1987 and were found to be compatible with the NRC's regulations at that time. Currently, Idaho's regulations are missing the most recent NRC amendments that are necessary for compatibility. The low staffing level, of course, precludes any State efforts toward updating its radiation control regulations at this time.

Background:

° Idaho became an Agreement State in 1968.

° The State currently administers about 130 licenses. Two are significant, the broad licenses issued to the University of Idaho and to Idaho State University. The remaining licenses are the normal mix of institutional medical, industrial radiographers, gauge users, etc. There are no radiopharmacies, LLW brokers, no large manufacturers, or large irradiators in Idaho, although license applications have been received for a nuclear pharmacy, a nuclear laundry and distributor of tritium exit signs.

° On November 9, 1982, Idaho returned to the NRC authority to regulate byproduct material as defined in Section 11e.(2) of the Atomic Energy Act of 1954, as amended (uranium and thorium mill tailings).

° In 1987, NRC conducted a routine review of the State's Agreement program. Shortly thereafter, a staffing problem emerged when two State health physicists left the program.

° In 1988, Carlton Kammerer met briefly with Governor Andrus during a meeting of the National Governors' Association and indicated the State's Agreement program needed attention because of staff turnover.

° The last routine review was conducted in July, 1989. Although the program was found adequate and compatible, a senior staff person left the program following the review and our comment letter emphasized the need to fill the position. This was the second consecutive review in which staff turnover was identified by NRC as a concern.

° In June 1990, NRC conducted a review visit. Several significant findings were made, including overdue inspections. The State had no plans to fill a vacant position because of uncertainties in continuing the program. Because of the nature of the findings, the report was sent to the State under a cover letter dated July 23, 1990, requesting a response. (Review visits are normally less formal than a routine review and correspondence with the State concerning the review visit is not normally done.)

° In September 1990, the State responded and informed us that options concerning the program were being reviewed with the Governor's office and a decision would be forthcoming soon.

° In early October 1990, we were informed by the State that Governor Andrus planned to request the State legislature (which convened in January 1991) to provide additional positions for the State program and to charge user fees. In our October 5, 1990 letter to the State acknowledging this information, we emphasized our concern over the need to address the inspection backlog.

° On October 17, 1990, the State confirmed by letter plans to request legislative action and informed us that failing legislative action, the program would be relinquished to NRC. There was no information concerning inspection effort.

° In early November, Mr. Kammerer met with the State to discuss the program. A follow-up letter from the State on November 5, 1990 stated the State would request assistance from the CRCPD and DOE (INEL) to address the backlog.

° On November 16, 1990 we asked Idaho for specific information on the schedule to resume inspections immediately and also asked for information on the extent of Governor Andrus' awareness of the program's problems.

° On November 20, 1990, the State provided an inspection plan and informed us that Governor Andrus was aware of the problems and was supportive of the efforts to resolve the funding and staffing shortage.

° Inspections were resumed by the State in January 1991 following a telephone call to the State in January 1991 by Vandy Miller, Assistant Director of State Agreements Program.

° On February 13, 1991, upon learning that the Branch Chief for the Idaho radiation control program resigned, Mr. Kammerer sent a letter to the State requesting a response within 48 hours on the State's plans regarding the program. The State, by telephone, requested a two week extension (i.e., to February 28, 1991) to permit an examination of the issues and options.

° In February 1991, SP had numerous contacts with the Governor's office and other State officials and a State legislator to provide background information on the program and particularly on staffing and fees. The Governor's office informed us that the State was reviewing three options: (1) fund the program out of general revenues, (2) establish a fee system, or (3) return the program to NRC. The bottom line was that it appeared that the right people had the right information necessary to make an informed decision.

° On March 1, 1991, SP was informed by the Director of the Department of Health and Welfare that the State intends to turn back the Agreement.

° On March 4, 1991, Mr. Kammerer by telephone informed the Department Director (in general terms) of the Commission's decision to establish an annual fee for materials licensees. This information could alter the State's decision since it would affect how proposed State fees would be viewed by State licensees.

Nuclear Regulator Commission
Proposed Federal Register Notice

Reassertion of Certain Regulatory Authority
in the State of Idaho

By letter dated March 25, 1991, Governor Cecil Andrus of Idaho stated his decision to return the Agreement program and accordingly the NRC is reasserting its authority over byproduct material as defined as Section 11e.(1) of the Atomic Energy Act, as amended, source material and special nuclear material in quantities not sufficient to form a critical mass. The Governor stated that because of severe budget constraints, as well as other compelling reasons, the State can no longer assume regulatory responsibility for these materials. A copy of the Governor's letter is on file in the Commission Public Document Room at 2120 L Street, N.W., Washington, D.C.

Pursuant to the provisions of Section 274j of the Atomic Energy Act of 1954, as amended, the Nuclear Regulatory Commission found on _____ that it is necessary to terminate the Idaho Agreement relinquishing NRC authority over byproduct material as defined as Section 11e.(1) of the Atomic Energy Act of 1954, as amended, source material and special nuclear material in quantities not sufficient to form a critical mass and to reassert NRC licensing and regulatory authority over these materials in order to protect the public health and safety. This finding ensures that there will be no lapse of licensing and regulatory authority over these activities and materials upon relinquishment of this authority by the State of Idaho. This reassertion of authority will become effective on _____, 1991.

Persons seeking licenses for activities within Idaho involving byproduct material as defined in Section 11e.(1) of the Atomic Energy Act of 1954, as amended, or source or special nuclear materials should file such applications with the U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, TX 76011.

Existing licensees in Idaho are being advised of this change in regulatory authority. Pursuant to a Commission Order published with this notice, existing Idaho licenses affected by this change will become effective NRC licenses under conditions set forth in the Order.

For information regarding this reassertion action contact the NRC's Office of State Programs, Mr. Carlton Kammerer (301-492-0321).

Inquiries regarding the status of licenses or applications should be directed to NRC Region IV Office, Arlington, Texas. The contact is Jack Whitten (817-860-8197).

Attachment 5

Dated at Rockville, Maryland this _____ day of _____, 1991.

FOR THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

_____
Carlton Kammerer, Director
State Programs
Office of Governmental and Public Affairs

The Honorable Cecil Andrus
Governor of Idaho
Boise, Idaho 83720

Dear Governor Andrus:

As a result of your letter of March 25, 1991, the Commission on _____, 1991 agreed to terminate Idaho's Agreement relinquishing the U.S. Nuclear Regulatory Commission (NRC) authority over byproduct, source and special nuclear materials and to reassert NRC licensing and regulatory authority over these materials in order to protect the public health and safety. The effective date of the termination is _____, 1991. Enclosed is a copy of the Federal Register notice which we expect to be published in the next few days. We also expect to issue a public announcement in conjunction with issuance of the Federal Register notice.

Mr. Richard Donovan, Director of the Department of Health and Welfare, was informed of the decision on _____, 1991. I understand he is making arrangements for transfer of the appropriate files and other material to the NRC.

We appreciate the State's cooperation in this matter.

Sincerely,

Kenneth M. Carr

Enclosure:
As stated

Attachment 6

DRAFT

Draft Public Announcement

NRC TO REASSERT REGULATORY AUTHORITY IN IDAHO

The Nuclear Regulatory Commission is reasserting its regulatory authority over the possession and use of byproduct, source and special nuclear materials in the State of Idaho.

The action, which is effective on _____, is being taken in order to ensure that the public health and safety will be protected after Governor Cecil Andrus, in a March 25 letter to the Commission, advised that Idaho could no longer carry out its responsibilities as an Agreement State due to severe budget constraints.

Under a section of the Atomic Energy Act added in 1959, individual States can assume part of the NRC's regulatory authority over the possession and use of byproduct, source and special nuclear materials by demonstrating that a program is in place for the control of radiation hazards adequate to protect the public health and safety and a Commission finding that the program is compatible with the Commission's program for regulating those materials. With the reassertion of NRC regulatory authority in Idaho, there will be 28 Agreement States.

Licensees in Idaho are being advised of the Commission's action in an Order (dated) _____ and the NRC staff has identified files which are to be transferred from Idaho authorities. In the meantime, the Idaho licenses, as currently issued, will remain in effect until they can be revised, if necessary, to meet NRC requirements.

Attachment 7

DRAFT

Persons seeking new licenses for activities involving radioactive materials subject to NRC regulation in Idaho should file applications with the Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

#

Draft Congressional Letter

Dear Mr. Chairman:

At the request of the Governor of Idaho, the Commission, on _____, 1991 agreed to terminate Idaho's Agreement relinquishing the U.S. Nuclear Regulatory Commission (NRC) authority over byproduct material as defined in Section 11e.(1) of the Atomic Energy Act, as amended, source material and special nuclear material, and to reassert NRC licensing and regulatory authority over these materials, in order to protect the public health and safety. The effective date of the termination is _____, 1991. Enclosed is a copy of the Federal Register notice which we expect to be published in the next few days. We also expect to issue a public announcement in conjunction with issuance of the Federal Register notice.

Sincerely,

James M. Taylor
Executive Director
for Operations

Enclosure:
As stated

Attachment 8

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

April 5, 1991

Mr. Richard P. Donovan, Director
Department of Health and Welfare
450 W. State Street
Boise, ID 83720-5450

Dear Mr. Donovan:

As you are aware, the Governor has requested on March 25, 1991 the Commission to terminate the Section 274b Agreement with the State of Idaho and to reassert its regulatory authority over persons using radioactive materials covered under the Agreement.

Should Idaho at some future time wish to again become an Agreement State, it may do so by requesting a new Agreement in accordance with the Nuclear Regulatory Commission (NRC) Policy Statement. NRC would require the State to be both adequate to protect public health and safety (per the enclosed Guidelines, particularly as it relates to staff) and compatible with the NRC programs, including regulations, before the NRC would consider relinquishing its authority.

For a termination of the Agreement, the NRC will take the following steps:

1. NRC staff send forth the Commission Decision Paper which includes (a) history, (b) recommendation and proposed transfer date, (c) proposed Commission Order making Idaho licenses NRC licenses, and (d) draft notification of press and Congress.

2. Chairman Carr will respond to the Governor's request by registered letter of the Commission's decision.

3. The Regional Administrator will send the Commission Order to all Idaho licensees, including Governor Andrus' letter to Chairman Carr and Chairman Carr's letter to the Governor.

4. Region IV will announce workshop(s) within the State to be conducted by NRC regarding NRC's total program of licensing, inspection, fees, etc.

We would appreciate receiving a complete mailing list, including telephone numbers, for all of the licensees in Idaho (specific and general) to enable an orderly transition for the State, NRC and the affected licensees. This will enable us to send timely notifications to them about the transfer of authority. We would like to receive this list within one week from the date of this letter.

Attachment 9

When the Agreement is terminated, we plan to send NRC staff to Boise to physically pick up the license files for transfer to the NRC. License files would include:

- a copy of the current license including all current amendments;
- copies of underlying applications and supplementary materials provided by the licensee in support of the application for the license and subsequent amendments;
- copies of pending license applications and requests for amendments under review at the time of the transfer, including reviewer notes or other documents that constitute an interim record of actions taken on the pending applications and requests;
- copies of inspection reports and associated enforcement correspondence to and from the licensee;
- copies of other reports and other correspondence received from the licensee including documentation of telephone communications;
- copies of reports of sampling, testing and analyses conducted of licensees' operations or surrounding environs;
- copies of other documents normally included as part of the Idaho record for licensees;
- copies of registrations filed by general licensees who are subject to registration requirements; and
- copies of reciprocity notices filed by out-of-State licensees for work that may be in progress at the time of the transfer.

With respect to pending licensing actions and licensees overdue for inspections, we would appreciate receiving separate listings of these at the same time you send us a mailing list of licensees. This will help us plan staffing assignments for this work. We would appreciate receiving a list of licenses terminated by the State and, if the files are still accessible, would appreciate including those records for transfer to NRC. If licensees have buried radioactive material under either specific authorization of the State or under authority of State regulations, we would appreciate receiving a list of these licensees and the pertinent records. If any sites are known to the State to contain residual radioactivity resulting from contamination by materials that were subject to the Agreement, we would appreciate receiving a listing of those sites and pertinent records.

Other relevant records or information not specified should also be made known to us as the Agency asserting authority for the protection of the public health and safety in the State of Idaho. We request all such information including records be included in the files and records to be transferred to NRC.

Except as noted these additional lists and records should be made available for transfer to us when we take possession of the license files.

NRC plans to inform the public of the termination of the Agreement through a Press Release. If the State plans to issue one as well, we would like to coordinate the releases. Please advise us of your plans in this regard.

The contact for the transfer is Robert Doda, NRC Region IV State Agreements Officer. He is located at 611 Ryan Plaza, Suite 1000, Arlington, Texas 76011 and may be reached at 817-860-8139.

Sincerely,

Carlton Kammerer

Carlton Kammerer, Director
State Programs
Office of Governmental and Public Affairs

Enclosure:
As stated

COMMISSION NOTICES
POLICY STATEMENTS

AGREEMENT STATES

46 FR 7540
Published 1/23/81
Effective 1/23/81

Amended by PS published 7/16/81 (46 FR 36969) and 7/21/83 (48 FR 33376)

Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: The Nuclear Regulatory Commission has revised its statement of policy regarding criteria for guidance of States and NRC in discontinuance of NRC regulatory authority and assumption of regulatory authority by States through agreement. This action is necessary to make editorial changes to update the policy statement, to allow States to enter into agreements for low-level waste only, and to incorporate the provisions and requirements of the Uranium Mill Tailings Radiation Control Act of 1978. Adoption of this policy will allow interested States to enter into agreements with the NRC and regulate low-level waste sites only. Additionally, those States that meet the criteria for the regulation of uranium mills and tailings may exercise regulatory authority over these sources as provided by the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

The revised statement of policy reflects the following principal changes:

1. Modification of Criterion 27 to allow a State to seek an agreement for the regulation of low-level waste as a separate category.
2. Inclusion of additional criteria for States wishing to continue regulating uranium and thorium processors and mill tailings after November 8, 1981.
3. Editorial and clarifying changes to make the statement current.

DATES: This policy statement is effective January 23, 1981.

FOR FURTHER INFORMATION CONTACT: John F. Kendig, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone: 301-492-7767.

SUPPLEMENTARY INFORMATION:

1. These criteria were developed to implement a program, authorized by Pub. L. 86-373 which was enacted in the form of a new section to the Atomic Energy Act (Section 274) and approved by the President on September 23, 1959 and amended by Pub. L. 95-601 approved November 8, 1978. These criteria are intended to indicate factors which the Commission intends to consider in approving new or amended agreements. They are not intended to limit Commission discretion in viewing individual agreements or amendments. In accordance with these statutory provisions, when an agreement between a State and the NRC is effected, the Commission will discontinue its regulatory authority within that State over one or more of the following materials: byproduct material as defined in Section 11e(1) of the Act (radioisotopes), byproduct material as defined in Section 11e(2) of the Act (mill tailings or wastes), source material (uranium and thorium), special nuclear material (uranium 233, uranium 235 and plutonium) in quantities not sufficient to form a critical mass and permanent disposal of low-level waste containing one or more of the materials stated above but not including mill tailings.

2. An agreement may be effected between a State and NRC: (1) upon certification by the Governor that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement and the State desires to assume regulatory responsibility for such materials; and (2) after a finding by the Commission that the State program is in accordance with the requirements of subsection o of section 274 and in all other respects compatible with the Commission's program for the regulation of such materials, and is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement. It is also necessary that the State have enabling legislation authorizing its Governor to enter into such an agreement.

3. The original criteria were published on March 24, 1961 (26 FR 2537) after discussions with various State officials and other State representatives, to provide guidance and assistance to the States and the AEC (now NRC) in developing a regulatory program which would be compatible with that of the NRC. The criteria were circulated among States, Federal agencies, labor and industry, and other interested groups for comment.

4. The criteria require that the State authority consider the total accumulated occupational radiation exposure of individuals. To facilitate such an approach, it is the view of the NRC that an overall radiation protection program is desirable. The maximum scope of each State's radiation protection program is not, however, a necessary or appropriate subject for coverage in the criteria. Consequently, the criteria are silent on the question of whether a State should have a total regulatory program covering all sources of radiation, including those not subject to control by the NRC under the Atomic Energy Act, such as x-rays, radium, accelerators, etc.

5. These revised criteria provide for entering into an agreement for a separate category of materials, namely, low-level waste material in permanent disposal facilities. They also provide new criteria for States wishing to continue regulating uranium and thorium processing and the wastes resulting therefrom under the provisions of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604) after November 8, 1981. The revised criteria also contain a number of editorial changes such as changing AEC to NRC where appropriate to conform to present practice and law.

6. Inquiries about details of the criteria or other aspects of the NRC Federal-State Relations Program should be addressed to the Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Criteria [1]

Objectives

1. *Protection.* A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

Radiation Protection Standards [2]

[1] The criteria were first adopted in February 1962 (26 FR 2537, March 24, 1962, and amended in November 1965 (30 FR 13904, December 4, 1965). Minor editorial changes were made in June 1968 to reflect the authority of the U.S. Department of Transportation and Organization change in NCRP.

[2] Suggested State regulations and State legislation will give content to all criteria mentioned.

2. *Standards.* The State regulatory program shall adopt a set of standards for protection against radiation, which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

3. *Uniformity in Radiation Standards.* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by Part 20 of the NRC regulations based on officially approved radiation protection guides.

4. *Total Occupational Radiation Exposure.* The regulatory authority shall consider the total occupational radiation exposure of individuals including that from sources which are not regulated by it.

5. *Surveys, Monitoring.* Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and • shall be made in determining compliance with safety regulations.

6. *Labels, Signs, Symbols.* It is desirable to achieve uniformity in labels, signs and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

7. *Instruction.* Persons working in or frequenting restricted areas * shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, section 19.16 and to be represented during inspections as specified in section 19.14 of 10 CFR 19.

8. *Storage.* Licensed radioactive material in storage shall be secured against unauthorized removal.

9. Radioactive Waste Disposal.

(a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR 20.

The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.

(b) Land disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR Part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (section 151(a)(2), Pub. L. 97-425).

10. *Regulations Governing Shipment of Radioactive Materials.* The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.

11. *Records and Reports.* The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

12. *Additional Requirements and Exemptions.* Consistent with the overall criteria here enumerated and to accommodate special cases or circumstances, the State regulatory authority shall be authorized to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

Prior Evaluation of Uses of Radioactive Materials

12. *Prior Evaluation of Hazards and Uses, Exceptions.* In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

14. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. this guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

15. *Human Use.* The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.

Inspection

16. *Purpose, Frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine, and to assist in obtaining

* "Restricted area" means any area access to which is controlled by the licensee for the purpose of radiation protection of individuals from exposure to radiation and radioactive materials. "Restricted area" shall not include any area used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

compliance with regulatory requirements.

Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to assure compliance.

17. *Inspections Compulsory.* Licensees shall be under obligation by law to provide access to inspectors.

18. *Notification of Results of Inspection.* Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

Enforcement

19. *Enforcement.* Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials, the obtaining of injunctive relief, and the imposing of civil or criminal penalties.

Personnel

20. *Qualifications of Regulatory and Inspection Personnel.* The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments—their selection, use and calibration—laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State regulatory staff may need to be supplemented by consultants or other State agencies with expertise in geology, hydrology, water quality, radiobiology and engineering disciplines.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training-radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These persons should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

Special Nuclear Material, Source Material and Tritium

21. *Conditions Applicable to Special Nuclear Material, Source Material and Tritium.* Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material and tritium, and (2) periodic inventory data.

22. *Special Nuclear Material Defined.* Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium 233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

(This definition is subject to change by future Commission rule or regulation.)

Administration

23. State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:

a. Formulation of rules of general applicability;

b. Approving or denying applications for licenses or authorization to possess and use radioactive materials, and

c. Taking disciplinary actions against licensees.

Arrangements For Discontinuing NRC Jurisdiction

24. *State Agency Designation.* The State should indicate which agency or agencies will have authority for carrying on the program and should provide the NRC with a summary of that legal authority. There should be assurances against duplicate regulation and licensing by State and local authorities, and it may be desirable that there be a single or central regulatory authority.

25. *Existing NRC Licenses and Pending Applications.* In effecting the

discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications, by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect for an appropriate period of time under State law, existing NRC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier reexamination or termination of the license.

26. *Relations With Federal, Government and Other States.* There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

27. *Coverage, Amendments, Reciprocity.* An agreement providing for discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State may relate to any one or more of the following categories of materials within the State, as contemplated by Public Law 86-373 and Public Law 95-604:

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. Low-level wastes in permanent disposal facilities, as defined by statute or Commission rules or regulations containing one or more of the materials stated in a, c, and d above but not including byproduct material as defined in Section 11e(2) of the Act;

but must relate to the whole of such category or categories and not to a part of any category.* If less than the five categories are included in any discontinuance of jurisdiction, discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State of the others may be accomplished subsequently by an amendment or by a later agreement.

The agreement may incorporate by reference provisions of other documents, including these criteria, and the agreement shall be deemed to incorporate without specific reference the provisions of Pub. L. 86-373 and Pub. L. 95-604 and the related provisions of the Atomic Energy Act.

*A State which does not wish to continue regulation of uranium and thorium processors and byproduct material as defined in Section 11e.(2) of the Atomic Energy Act as amended, after November 8, 1981 pursuant to Pub. L. 95-604 may obtain authority over all source material licenses within the State except for uranium or thorium processors.

Arrangements should be made for the reciprocal recognition of State licenses and Federal licenses in connection with out-of-the-jurisdiction operations by a State or Federal licensee.

28. *NRC and Department of Energy Contractors.* The State should provide exemptions for NRC and DOE contractors which are substantially equivalent to the following exemptions:

a. Prime contractors performing work for the DOE at U.S. Government-owned or controlled sites;

b. Prime contractors performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;

c. Prime contractors using or operating nuclear reactors or other nuclear devices in a U.S. Government-owned vehicle or vessel; and

d. Any other prime contractor or subcontractor of DOE or NRC when the State and the NRC jointly determine (i) that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety and (ii) that the exemption of such contractor or subcontractor is authorized by law.

Additional Criteria for States Regulating Uranium or Thorium Processors and Wastes Resulting Therefrom After November 8, 1981

Statutes

29. State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements of Public Law 95-604, Uranium Mill Tailings Radiation Control Act (UMTRCA) as follows:

a. Authority to regulate the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

b. That an adequate surety (under terms established by regulation) will be provided by the licensee to assure the completion of all requirements established by the (cite appropriate State agency) for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with the generation or disposal of such byproduct material.

c. If in the States' licensing and regulation of byproduct material or of any activity which produces byproduct material, the State collects funds from the licensee or its surety for long-term surveillance and maintenance of such material, the total amount of the funds collected by the State shall be transferred to the U.S. if custody of the byproduct material and its disposal site is transferred to the Federal Government upon termination of the State license. (See 10 CFR 150.32.) If no default has occurred and the reclamation or other bonded activity has been performed, funds for the purpose are not to be transferred to the Federal Government. The funds collected by the State shall be sufficient to ensure compliance with the regulations the Commission establishes pursuant to Section 161X of the Atomic Energy Act.

d. In the issuances of licenses, an opportunity for written comments, public hearing (with transcript) and cross examination is required.

e. In the issuances of licenses, a written determination of the action to be taken based upon evidence presented during the public comment period and which is subject to judicial review is required.

f. A ban on major construction prior to completion of the written environmental analysis stipulated in Criterion 31.

g. An opportunity shall be provided for public participation through written comments, public hearings, and judicial review of rules.

30. In the enactment of any supporting legislation, the State should take into account the reservations of authority to the U.S. in UMTRCA as stated in 10 CFR 150.15a and summarized by the following:

a. The establishment of minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of the byproduct material.

b. The determination that prior to the termination of a license, the licensee has complied with decontamination, decommissioning and reclamation standards, and ownership requirements for sites at which byproduct material is present.

c. The requirement that prior to termination of any license for byproduct material, as defined in Section 11e.(2), of the Atomic Energy Act or for any activity that results in the production of such material, title to such byproduct material and the disposal site be transferred to the Federal Government or State at the option of the State, provided such option is exercised prior to termination of the license.

d. The authority to require such monitoring, maintenance, and emergency measures after the license is terminated as necessary to protect the public health and safety for those materials and property for which the State has assumed custody pursuant to Pub. L. 95-604.

e. The authority to permit use of the surface or subsurface estate, or both of the land transferred to the United States or State pursuant under provision of the Uranium Mill Radiation Tailings Control Act.

f. The authority to exempt land ownership transfer requirements of Section 83(b)(1)(A).

31. It is preferable that State statutes contain the provisions of Section 6 of the Model Act. But the following may be accomplished by adoption of either procedures by regulation or technical

criteria. In any case, authority for their implementation should be adequately supported by statute, regulation or case law as determined by the State Attorney General.

In the licensing and regulation of ores processed primarily for their source material content and for the disposal of byproduct material, procedures shall be established which provide a written analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:[6]

a. An assessment of the radiological and nonradiological public health impacts;

b. An assessment of any impact on any body of water or groundwater;

c. Consideration of alternatives to the licensed activities; and

d. Consideration of long-term impacts of licensed activities (see Item 36b.(1).

Regulations

32. State regulations should be reviewed for regulatory requirements, and where necessary incorporate regulatory language which is equivalent to the extent practicable or more stringent than regulations and standards adopted and enforced by the Commission, as required by Section 274o (see 10 CFR 40 and 10 CFR 150.31(b)).

Organizational Relationships Within the States

33. Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings.

a. Charts should be developed which show the management organization and lines of authority. This chart should define the specific lines of supervision from program management within the radiation control group and any other department within the State responsible for contributing to the regulation of uranium processing and disposal of tailings. When other State agencies or regional offices are utilized, the lines of communication and administrative control between the agencies and/or regions and the Program Director should be clearly drawn.

b. Those States that will utilize personnel from other State Departments or Federal agencies in preparing the environmental assessment should designate a lead agency for supervising and coordinating preparation of this environmental assessment. It is normally expected that the radiation control agency in Agreement States will be the lead agency. The basic premise is that the lead agency is required to prepare the environmental assessment. Utilization of an applicant's environmental report in lieu of a lead agency assessment of the proposed project is not adequate or appropriate. However, the lead agency may prepare an environmental assessment based upon an applicant's environmental report. Other credible information may be utilized by the State as long as such information is verified and documented by the State.

c. When a lead agency is designated, that agency should coordinate preparation of the statement. The other agencies involved should provide assistance with respect to their areas of jurisdiction and expertise. Factors relevant in obtaining assistance from other agencies include the applicable statutory authority, the time sequence in which the agencies become involved, the magnitude of their involvement, and relative expertise with respect to the project's environmental effects.

In order to bring an environmental assessment to a satisfactory conclusion, it is highly recommended that an initial scoping document be developed which clearly delineates the area and scope of work to be performed by each agency within a given time constraint.

d. For those areas in the environmental assessment where the State cannot identify a State agency having sufficient expertise to adequately evaluate the proposal or prepare an assessment, the State should have provisions for obtaining outside consulting services. In those instances where non-governmental consultants are utilized, procedures should be established to avoid conflict of interest consistent with State law and administrative procedures.

Medical consultants recognized for their expertise in emergency medical matters, such as the Oak Ridge and Hanford National Laboratories, relating to the intake or uranium and its diagnosis thereof associated with uranium mining and milling should be identified and available to the State for advice and direct assistance.

During the budget preparation, the State should allow for funding costs incurred by the use of consultants. In addition, consultants should be available for any emergencies which may occur and for which their expertise would be needed immediately.

Personnel

34. Personnel needed in the processing of the license application can be identified or grouped according to the following skills: Technical; Administrative; and Support.

a. Administrative personnel are those persons who will provide internal [illegible] memoranda, reviews and [illegible] services necessary to assure completion of the licensing action. Support personnel are those persons who provide secretarial, clerical support, legal, and laboratory services. Technical personnel are those individuals who have the training and experience in radiation protection necessary to evaluate the enginering and radiological safety aspects of a uranium concentrator. Current indications are that 2 to 2.75 total professional person years' effort is needed to process a new conventional mill license, in situ license, or major renewal, to meet the requirements of UMTRCA. This number includes the effort for the environmental assessment and the in-plant safety review. It also includes the use of consultants. Heap leach applications may take less time and is expected to take 1.0 to 1.5 professional staff years' effort, depending on the circumstances encountered. Current indications are that the person years effort for support and legal services should be one secretary for approximately 2 conventional mills and ½ staff years for legal services for each noncontested mill case. The impact on environmental monitoring laboratory support services is difficult to estimate but should be added into the personnel requirements.

In addition, consideration should be given to various miscellaneous post-licensing ongoing activities including the issuance of minor amendments, inspections, and environmental surveillance. It is estimated that these activities may require about 0.5 to 1 person years effort per licensed facility per year, the latter being the case for a major facility. These figures do not include manpower for Title I activitives of UMTRCA.

b. In evaluating license applications the State shall have access to necessary specialities, e.g., radiological safety, hydrology, geology and dam construction and operation.

In addition to the personnel qualifications listed in the "Guide for Evaluation of State Radiation Control Programs," Revision 3, February 1, 1980, the regulatory staff involved in the regulatory process (Radiation) should have additional training in Uranium Mill Health Physics and Environmental Assessments.

c. Personnel in agencies other than the lead agency are included in these total person year numbers. If other agencies are counted in these numbers then it shall be demonstrated that these personnel will be available on a routine and continuing basis to a degree claimed as necessary to successfully comply with the requirements of UMTRCA and these criteria. The arrangements for making such resources available shall be documented, such as an interagency memorandum of understanding and confirmed by budgetary cost centers.

Functions To Be Covered

35. The States should develop procedures for licensing, inspection, and preparation of environmental assessments.

a. *Licensing*

(1) Licensing evaluations or

[6] It is strongly recommended that a 30-day period be provided for public review.

assessments should include in-plant radiological safety aspects in occupational or restricted areas and environmental impacts to populations in unrestricted areas from the plant.

(2) It is expected that the State will review, evaluate and provide documentation of these evaluations. Items which should be evaluated are:

(a) Proposed activities;
(b) Scope of proposed action;
(c) Specific activities to be conducted;
(d) Administrative procedures;
(e) Facility organization and radiological safety responsibilities, authorities, and personnel qualifications;
(f) Licensee audits and inspections;
(g) Radiation safety training programs for workers;
(h) Radiation safety program, control and monitoring;
(i) Restricted area markings and access control;
(j) At existing mills, review of monitoring data, exposure records, licensee audit and inspection records, and other records applicable to existing mills;
(k) Environmental monitoring;
(l) Emergency procedures, radiological;
(m) Product transportation; and
(n) Site and physical decommissioning procedures, other than tailings.
(o) Employee exposure data and bioassay programs.

b. *Environmental Assessment*

(1) The environmental evaluation should consist of a detailed and documented evaluation of the following items:

(a) Topography;
(b) Geology;
(c) Hydrology and water quality;
(d) Meteorology;
(e) Background radiation;
(f) Tailings retention system;
(g) Interim stabilization, reclamation, and Site Decommissioning Program;
(h) Radiological Dose Assessment;
(1) Source terms
(2) Exposure pathway
(3) Dose commitment to individuals
(4) Dose commitment to populations
(5) Evaluation of radiological impacts to the public to include a determination of compliance with State and Federal regulations and comparisons with background values
(6) Occupational dose
(7) Radiological impact to biota other than man
(8) Radiological monitoring programs, pre-occupational and operational
(i) Impacts to surface and groundwater, both quality and quantity;
(j) Environmental effects of accidents; and
(k) Evaluation of tailings management alternatives in terms of regulations.

(2) The States are encouraged to examine the need to expand the scope of the assessment into other areas such as:

(a) Ecology;
(b) Environmental effects of site preparation and facility construction on environment and biota;
(c) Environmental effects of use and discharge of chemicals and fuels; and
(d) Economic and social effects.

c. *Inspections*

(1) As a minimum, items which should be inspected or included during the inspection of a uranium mill should adhere to the items evaluated in the in-plant safety review. The principal items recommended for inspection are:

(a) Administration;
(b) Mill circuit, including any additions, deletions, or circuit changes;
(c) Accidents/incidents;
(d) Part 19 or equivalent requirements of the State;
(e) Action taken on previous findings;
(f) A mill tour to determine compliance with regulations, and license conditions;
(g) Tailings waste management in accordance with regulations and license conditions (see NRC Reg. Guide 3.11.1);
(h) Records;
(i) Respiratory protection in accordance with license conditions or 10 CFR Part 20.
(j) Effluent and environmental monitoring;
(k) Training programs;
(l) Transportation and shipping;
(m) Internal review and audit by management;
(n) Exit interview; and
(o) Final written report documenting the results of the inspection and findings on each item.

(2) In addition, the inspector should perform the following:

(a) Independent surveys and sampling.

(3) Additional guidance is contained in appropriate NRC regulatory and inspection guides. A complete inspection should be performed at least once per year.

d. *Operational Data Review*

(1) In addition to the reporting requirements required by the regulations or license conditions, the licensee will submit in writing to the regulatory agency within 60 days after January 1 and July 1 of each year, reports specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation. This data shall be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation doses to the public.

(2) All data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time periods and frequency. The data will be reported in a manner that will allow the regulatory agency to conform the dose to receptors.

Instrumentation

38. The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

a. The State will submit its list of instrumentation to the NRC for review. Arrangements should be made for calibrating such equipment.

b. Laboratory-type instrumentation should be available in a State agency or through a commercial service which has the capability for quantitative and qualitative analysis of radionuclides associated with natural uranium and its decay chain, primarily: U-238, Ra-226, Th-230, Pb-210, and Rn-222, in a variety of sample media such as will be encountered from an environmental sampling program.

Analysis and data reduction from laboratory analytical facilities should be available to the licensing and inspection authorities in a timely manner. Normally, the data should be available within 30 days of submittal. State acceptability of quality assurance (QA) programs should also be established for the analytical laboratories.

c. Arrangements should also be completed so that a large number of samples in a variety of sample media resulting from a major accident can be analyzed in a time frame that will allow timely decisions to be made regarding public health and safety.

d. Arrangements should be made to participate in the Environmental Protection Agency quality assurance program for laboratory performance.

---

52 FR 21132
Published 6/4/87

Evaluation of Agreement State Radiation Control Programs; Final General Statement of Policy

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final general statement of policy.

SUMMARY: The Nuclear Regulatory Commission is adopting as a general statement of policy the recently revised "Guidelines for NRC Review of Agreement State Radiation Control Programs." This statement of policy is being issued to inform the States and the public of the criteria and guidelines which the Commission intends to use in its periodic evaluations of Agreement State programs.

FOR FURTHER INFORMATION CONTACT: Donald A. Nussbaumer, State, Local and Indian Tribe Programs, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7787.

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kenneth M. Carr, Chairman
Kenneth C. Rogers
James R. Curtiss
Forrest J. Remick

In the Matter of the Governor of Idaho's request to return to the United States the Idaho program for the licensing and regulation of byproduct material as defined in Section 11e.(1) of the Atomic Energy Act of 1954, as amended, source material and special nuclear material in quantities not sufficient to form a critical mass.

ORDER

CLI-91-06

Pursuant to Section 274j.(1) of the Atomic Energy Act of 1954, as amended, the Commission grants the request of the Governor of Idaho for the Nuclear Regulatory Commission to accept the return of authority over the licensing and regulation in Idaho of byproduct material as defined by Section 11e.(1) of the Atomic Energy Act of 1954, as amended, source material and special nuclear material in quantities not sufficient to form a critical mass. The Commission finds that this action is required to protect the public health and safety.

Idaho is an Agreement State. Under the provisions of the Agreement, which became effective October 1, 1968, Idaho assumed and NRC relinquished authority for the licensing and regulation of byproduct material, source material and special nuclear material in quantities not sufficient to form a critical mass. On November 9, 1982, Idaho returned to the NRC authority to regulate byproduct material as defined by Section 11e.(2) of the Atomic Energy Act of 1954, as amended.

By letter dated March 25, 1991, Governor Cecil Andrus advised the Commission of his decision to return Idaho's Agreement program to the NRC. In his letter, the Governor indicated that he made this decision following a decision by the State Legislature not to fund the program for regulating radioactive materials subject to the Agreement at a level sufficient to meet NRC guidelines for adequacy to protect the public health and safety and compatibility with the NRC program. In view of the State of Idaho's decision to return its Agreement program to the NRC, the Commission finds it necessary to accept return of the Idaho program, and effective April 26, 1991 at 12:01 a.m., Mountain Daylight Savings Time, terminates the Section 274b. Agreement between the NRC and the State of Idaho in its entirety, and reasserts NRC authority over the licensing and regulation in Idaho of byproduct material, as defined in Section 11e.(1) of the Atomic Energy Act of 1954, as amended, source material and special nuclear material in quantities not sufficient to form a critical mass.

The Commission staff will review the files of the Idaho Department of Health and Welfare and will identify all relevant licensing documents for transfer to the NRC. In order to aid in a smooth transition, the Commission deems it essential to maintain continuity in the licensing and regulatory obligations of the Idaho licensees whose dockets are being transferred to the NRC. This continuity may be assured by keeping in effect on an interim basis all Idaho licenses as currently issued, until such time as the licenses may be modified, if necessary, to meet NRC standards, or such time as the licenses are renewed or reissued.

Therefore, the Commission hereby terminates, effective April 26, 1991 at 12:01 a.m. Mountain Daylight Savings Time, the Idaho Agreement and orders that, as of that date, all Idaho-issued licenses, license amendments, outstanding orders (if any), or other documents establishing obligations for specific licensees shall be deemed licenses issued or actions taken by the Commission, and such licenses or actions shall remain in effect by their existing terms as if initially issued by the Commission. The Commission staff will review all transferred licensing documents and may provide for their revision in accordance with Commission regulations if necessary for such licenses to meet applicable NRC requirements.

For the Commission

Secretary of the Commission

Dated at Rockville, Maryland
this 11th day of April 1991.