

POLICY ISSUE NOTATION VOTE

October 15, 2008

SECY-08-0154

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: PROPOSED AGREEMENT BETWEEN THE COMMONWEALTH OF
VIRGINIA AND THE COMMISSION PURSUANT TO SECTION 274 OF
THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

PURPOSE:

To request Commission approval to publish the proposed Agreement with the Commonwealth of Virginia (Commonwealth or Virginia) and a summary of the draft U.S. Nuclear Regulatory Commission (NRC) staff assessment of the Commonwealth's regulatory program in the *Federal Register* (FR) for public comment.

BACKGROUND:

Section 274b of the Atomic Energy Act of 1954, as amended (Act) authorizes the Commission to enter into an Agreement with the Governor of a State providing for the discontinuance of the regulatory authority of the Commission with respect to certain materials. In 1981, the Commission adopted the revised policy statement entitled, "Criteria for Guidance of States and Nuclear Regulatory Commission (NRC) in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (46 FR 7540; January 23, 1981), as amended by statements published on July 16, 1981 (46 FR 36969), and on July 21, 1983 (48 FR 33376), referred to hereafter as the "policy statement." The Office of Federal and State Materials and Environmental Management Programs Procedure SA-700, "Processing an Agreement," was subsequently adopted as an internal procedure for applying the policy statement to the processing of a new Agreement. The criteria and approaches in these documents form the basis for the staff's evaluation of the Commonwealth's request.

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SECY NOTE: TO BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS AFTER DISPATCH OF LETTERS.

DISCUSSION:

By letter dated June 12, 2008, Governor Timothy M. Kaine requested that the Commission enter into an Agreement with the Commonwealth under Section 274b of the Act. The Governor requested that the Commission discontinue its regulatory authority for 11e.(1), 11e.(3), and 11e.(4) byproduct materials, source materials, and special nuclear materials not sufficient to form a critical mass, and allow Virginia to assume regulatory authority for such material under the Agreement.

Governor Kaine certified that the Commonwealth has a program for the control of radiation hazards that is adequate to protect public health and safety within the Commonwealth with respect to the materials covered by the proposed Agreement. The Governor further certified that the Commonwealth wishes to assume the regulatory responsibility for those materials. Copies of Governor Kaine's letter and Chairman Klein's response are enclosed (Enclosures 1 and 2, respectively).

The effective date of the Agreement proposed by the Commonwealth is March 31, 2009. Following the public comment period and the resolution of public comments, the NRC staff will be prepared to recommend that the Commission approve the proposed Agreement. The NRC staff will include an updated schedule (including a revised effective date for the Agreement, if appropriate), along with an analysis of the public comments, as part of the final paper to the Commission recommending approval of the Virginia Agreement request.

As required by Section 274e of the Act, the NRC staff will publish the proposed Agreement for comment in the *FR* once each week for four consecutive weeks. The *FR* Notice (Enclosure 3) will include a summary of the staff's draft assessment of the proposed Virginia regulatory program for regulation of 11e.(1), 11e.(3), and 11e.(4) byproduct materials, source materials, and special nuclear materials in quantities not sufficient to form a critical mass, in addition to the text of the proposed Agreement. The staff plans to follow the same process for Virginia as it did for Pennsylvania, Minnesota, Utah, Wisconsin, and Oklahoma. For these Agreements, the NRC staff published the proposed Agreements in the *FR* for public comment, in parallel with the Commission's review of the staff's draft assessment (Enclosure 4). Once approved by the Commission, the final Agreement will be published in the *FR* within 30 days after signature by the Chairman and the Governor.

The NRC staff's draft assessment of the Commonwealth's program covered seven subjects: objectives, radiation protection standards, prior evaluation of uses of radioactive material, inspection, enforcement, personnel, and administration. The NRC staff has concluded that the Commonwealth as defined by these subjects is compatible with the program of the NRC and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. However, it should be noted that one deficiency was found during the NRC staff's review. As a result of the restructuring of Commonwealth Regulations, the Virginia Department of Health (VDH) deleted financial assurance requirements equivalent to 10 CFR 40.36. VDH is proceeding with the necessary revisions to their regulations to ensure compatibility, and these revisions will be effective by January 1, 2009. Therefore, on the proposed effective date of the Agreement, the Commonwealth will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass.

The Commonwealth currently regulates the users of naturally-occurring and accelerator-produced radioactive materials (NARM). The Energy Policy Act of 2005 (EPAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and

11e.(4) of the Act, to include certain naturally-occurring and accelerator-produced radioactive materials. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPAct requirements. Under the proposed Agreement, the Commonwealth would assume regulatory authority for these radioactive materials. Therefore, if the proposed Agreement is approved, the Commission would terminate the time-limited waiver in the Commonwealth coincident with the effective date of the Agreement.

If the proposed Agreement is approved, it is estimated that there will be 420 total Commonwealth licenses. NRC would transfer 386 specific licenses to the Commonwealth's jurisdiction. In addition, the Commonwealth would retain regulatory authority for approximately 216 NARM licenses. Approximately 180 of these NARM licenses are dually regulated by the Commonwealth and the NRC.

RESOURCES:

The Commonwealth has a proposed effective date for the Agreement of March 31, 2009. NRC Region I has adequate resources budgeted within the Materials Users subprogram (Materials Licensing and Materials Inspection planned activities) to perform materials licensing, inspection, decommissioning, enforcement, allegation casework and transition activities related to the Commonwealth through all of Fiscal Year 2009, in the event that the March 31, 2009, date is not met.

CONCLUSION:

The NRC staff concludes that based on the draft assessment the Commonwealth satisfies the criteria in the Commission's policy statement, and therefore, would meet the requirements of Section 274 of the Act. The proposed Commonwealth program to regulate Agreement materials, as comprised of statutes, regulations, and procedures, is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

COMMITMENTS:

Listed below are the actions or activities committed to by the staff in this paper.

1. The staff will provide an updated schedule and an analysis of public comments along with the final paper to the Commission, requesting approval of the proposed Agreement.

RECOMMENDATIONS:

That the Commission:

1. Approve:

Publication of the *FR* Notice once each week for four consecutive weeks, as required by the Act.

2. Review:

The proposed Agreement between the Commonwealth and the NRC pursuant to Section 274 of the Act, and the draft of the NRC staff assessment of the Commonwealth

regulatory program, in parallel with the publication of the proposed Agreement in the FR.

3. Note:

- a. The staff will place a copy of the NRC Staff Draft Assessment (summarized in the *FR* Notice) in the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>, and into the Agency wide Documents Access and Management System.
- b. The Office of Congressional Affairs will dispatch a letter to the knowledgeable Congressional Committees informing them that the Commission is considering entering into an amended Agreement with the Commonwealth.
- c. The Office of Public Affairs will issue a press release.
- d. FSME will dispatch a letter to the Federal Agencies listed in FSME Procedure SA-700 and all of the States.

COORDINATION:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objection.

/RA Bruce S. Mallett Acting for/

R. W. Borchardt
Executive Director
for Operations

Enclosures:

1. Letter from Governor Kaine to Chairman Klein dated June 12, 2008
2. Acknowledgment Letter from Chairman Klein to Governor Kaine dated July 11, 2008
3. Draft *Federal Register* Notice, including the Summary of the Draft Staff Assessment and the Proposed Agreement
4. Draft NRC Staff Assessment of the Proposed Virginia Byproduct Materials Program

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EDATS: FSME-2008-0047

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DATE	09/26/08	10/01/08	10/08/08	10/15/08		

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