

September 9, 2008

ALL AGREEMENT STATES, NON-AGREEMENT STATES, ALL STATE LIAISON OFFICERS

**UPDATE: NOTIFICATION OF IMPENDING PHASE 2 WAIVER TERMINATIONS AND
REMINDER TO FILE LICENSE APPLICATIONS (FSME-08-068)**

Purpose: To provide a notification that on September 30, 2008, the U.S. Nuclear Regulatory Commission (NRC) will be terminating the time-limited waivers (70 FR 51581), as required by the Energy Policy Act of 2005 (EPAcT), for certain non-Agreement States and remaining U.S. Territories. Also, to provide a reminder to those users of the new byproduct materials in non-Agreement States (including U.S. Territories) who were selected both in Phase 1 and in Phase 2 to file timely license applications. This letter is being provided for information only, and no response is requested.

Background: As described in previous communications, Section 651(e) of the EPAcT authorized the Commission to issue a waiver on August 31, 2005, to allow continued use and possession of naturally-occurring and accelerator-produced radioactive materials (NARM) while the Commission developed a regulatory framework for regulation of the new byproduct material.

The Commission has begun terminating the waiver in phases. The first phase of waiver terminations occurred on November 30, 2007. On November 30, the Commission terminated the waiver for Federal Government agencies, Federally Recognized Indian Tribes, Delaware, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Indiana, Wyoming, and Montana. Upon termination of the waiver, all persons who possess NARM in these States, U.S. Territories, or areas of exclusive Federal jurisdiction are to be in compliance with NRC regulations. Being in compliance with NRC regulations means that such persons are responsible for the proper handling, transfer, and disposal of NARM as set forth in NRC's regulations. In addition, such persons are required to file timely license applications to include the NARM.

Discussion: The Commission is preparing for the Phase 2 waiver terminations which will occur on September 30, 2008. The Commission has determined that Vermont, West Virginia, Missouri, Idaho, South Dakota, Guam, and all territories and possessions of the United States that were not identified as part of the Phase 1 waiver terminations will be included in Phase 2. It is anticipated that the remaining non-Agreement States, which include Connecticut, Virginia, New Jersey, Michigan, Alaska, and Hawaii, will have their waivers terminated in Phase 3 of the transition. Additionally, the Commission plans to terminate the waiver for non-Agreement States that enter into an Agreement with the NRC under Section 274b of the Atomic Energy Act of 1954, as amended, coincident with the effective date of such an agreement. At this time, Pennsylvania is the only State that has become an Agreement State prior to the Phase 2 waiver terminations.

As provided in the transition plan (72 FR 59157), which was published in the *Federal Register* on October 19, 2007, users of NARM in non-Agreement States and U.S. Territories will be required to (1) apply for license amendments for the new byproduct material within 6 months

from the date the waiver is terminated, if they hold an NRC specific byproduct materials license; or (2) submit a license application for the new byproduct material within 12 months from the date the waiver is terminated for their State. NRC wants to remind users in the States impacted in Phase 1 that the date has passed for the timely submission of license amendments, which was to occur by May 30, 2008; however, users have until December 1, 2008, for the timely submission of new license applications, if not already done so. Users in States impacted in Phase 1 that still need to submit license amendments, should submit their requests to the NRC as soon as possible.

Those users in States impacted in Phase 2 must submit their license amendments by March 31, 2009, or their new license applications by September 30, 2009, to be in accordance with the time frame allotted in the transition plan.

NRC Point of Contact: If you have any questions on this correspondence, please contact me at 301-415-8722 or the individual named below.

POINT OF CONTACT: Kim Lukes
TELEPHONE: (301)415-6701

INTERNET: KIM.LUKES@NRC.GOV
FAX: (301)415-5370

/RA/

Robert J. Lewis, Director
Division of Materials Safety
and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

from the date the waiver is terminated, if they hold an NRC specific byproduct materials license; or (2) submit a license application for the new byproduct material within 12 months from the date the waiver is terminated for their State. NRC wants to remind users in the States impacted in Phase 1 that the date has passed for the timely submission of license amendments, which was to occur by May 30, 2008; however, users have until December 1, 2008, for the timely submission of new license applications, if not already done so. Users in States impacted in Phase 1 that still need to submit license amendments, should submit their requests to the NRC as soon as possible.

Those users in States impacted in Phase 2 must submit their license amendments by March 31, 2009, or their new license applications by September 30, 2009, to be in accordance with the time frame allotted in the transition plan.

NRC Point of Contact: If you have any questions on this correspondence, please contact me at 301-415-8722 or the individual named below.

POINT OF CONTACT: Kim Lukes
TELEPHONE: (301)415-6701

INTERNET: KIM.LUKES@NRC.GOV
FAX: (301)415-5370

/RA/

Robert J. Lewis, Director
Division of Materials Safety
and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Distribution: DCD (SP03)

DMSSA r/f	K. Null, RIII	J. Kinneman, RI	A. Howell, RIV
D. Janda, RI	R. Browder, RIV	S. Reynolds, RIII	D. White, FSME
T. Taylor, FSME	S. Xu, FSME		

ML082530076

OFC	FSME/DMSSA	FSME/DMSSA	DMSSA
NAME	KLukes: sxg	DWhite	RLewis
DATE	09/9/08	09/9/08	09/9/08

OFFICIAL RECORD COPY