



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

SECRETARY

November 5, 2008

COMMISSION VOTING RECORD

DECISION ITEM: SECY-08-0154

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

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 5, 2008.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook", is written over a horizontal line.

Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein  
Commissioner Jaczko  
Commissioner Lyons  
Commissioner Svinicki  
OGC

SECY NOTE: THE SUBJECT SECY PAPER, THE INDIVIDUAL COMMISSIONER VOTES  
AND THIS SRM WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS AFTER  
DISPATCH OF THE LETTERS.

## VOTING SUMMARY - SECY-08-0154

### RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	10/24/08
COMR. JACZKO	X					10/27/08
COMR. LYONS	X				X	10/23/08
COMR. SVINICKI	X					10/27/08

### COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on November 5, 2008.

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary

**FROM:** Chairman Klein


**SUBJECT:** SECY-08-0154 – PROPOSED AGREEMENT BETWEEN  
THE COMMONWEALTH OF VIRGINIA AND THE  
COMMISSION PURSUANT TO SECTION 274 OF THE  
ATOMIC ENERGY ACT OF 1954, AS AMENDED

Approved   X   Disapproved        Abstain       

Not Participating       

**COMMENTS:** Below   X   Attached        None       

I join Commissioner Lyons in commending the NRC and Commonwealth of Virginia staffs for their diligent efforts to move this Agreement toward completion, and I look forward to Virginia becoming the thirty sixth Agreement State.

  
\_\_\_\_\_  
**SIGNATURE**

10/24/2008  
\_\_\_\_\_  
**DATE**

Entered on "STARS" Yes   ✓   No

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER JACZKO

SUBJECT: SECY-08-0154 – PROPOSED AGREEMENT BETWEEN  
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ATOMIC ENERGY ACT OF 1954, AS AMENDED

Approved X Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below ~~X~~ Attached \_\_\_\_\_ None ~~X~~

*I concur with Commissioner Jaczko's comment  
and congratulate*

  
\_\_\_\_\_  
SIGNATURE

10/27/08  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes \_\_\_\_\_ No \_\_\_\_\_

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Lyons

SUBJECT: SECY-08-0154 – PROPOSED AGREEMENT BETWEEN  
THE COMMONWEALTH OF VIRGINIA AND THE  
COMMISSION PURSUANT TO SECTION 274 OF THE  
ATOMIC ENERGY ACT OF 1954, AS AMENDED

Approved   X   Disapproved        Abstain       

Not Participating       

COMMENTS: Below        Attached   X   None       

  
Peter B. Lyons  
SIGNATURE

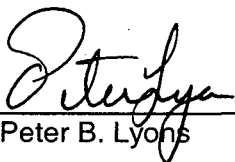
  10/ 23 /08    
DATE

Entered on "STARS" Yes   X   No

**Commissioner Lyons' Comments on SECY-08-0154**

I approve the staff recommendation to publish the proposed agreement with the Commonwealth of Virginia (Virginia) in the Federal Register once a week for four consecutive weeks. The Federal Register notice should clearly specify the activities that Virginia is requesting authority to regulate and those activities it is not requesting authority to regulate. I have attached editorial comments on the Federal Register notice, proposed Agreement between Virginia and the NRC and on the draft of the NRC staff assessment of Virginia's regulatory program.

The Commission paper reflects only a small portion of the tremendous effort that has gone into developing the proposed Agreement. Both NRC and Virginia staff should be commended for their efforts.

 10/23/08  
Peter B. Lyons Date

Comments to Appendix A of the Agreement

Only the affected section is provided.

## ARTICLE II

7. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons
8. The regulation of the extraction or concentration of source material from any ore processed primarily for its source material content.
9. The transfer of possession or control by the manufacturer, processor or producer of any product containing source material of byproduct material whose subsequent possession use, transfer and disposal by all other persons are exempt from the licensing and regulatory requirements of the Commission under 10 CFR Parts 30 and 40.

## ARTICLE III

With the exception of those activities identified in Article II.A. ~~(delete)~~ 1 through 4, this Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the Commonwealth may then exert regulatory authority and responsibility with respect to those activities.

Comments on the DRAFT ASSESSMENT  
Only affected items included

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.**

The NRC staff review verified that the Commonwealth has adopted regulations compatible with the NRC regulations in 10 CFR Part 20, including Subpart C, the occupational dose limits and Subpart D, the dose limits to individual members of the public. Commonwealth licensees are required to consider the radiation doses to individuals from all sources of radiation, except background radiation and radiation from medical procedures. Like NRC licensees, Commonwealth licensees are required to consider the radiation dose whether the sources **are licensed or unlicensed** ~~in the possession of a licensee or not.~~

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

13. 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 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 processor 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 specific use.**

The Commonwealth has adopted regulations containing regulatory requirements for applying for and issuing licenses, which are compatible with NRC's regulations.

~~The NRC staff review confirmed that the Commonwealth's regulations provide that a license authorizing the distribution of agreement materials that will subsequently be exempt from regulatory control may only be issued by the NRC.~~ **The NRC staff review confirmed that the Commonwealth's regulations provide that only NRC may issue a license authorizing the distribution of agreement materials that will subsequently be exempt from regulatory control.**



Since Criterion 13 was adopted, the Commission has determined that the regulatory authority to conduct safety evaluations of sealed sources and devices may be retained by the NRC, unless the State requests assumption of the authority and has in place an adequate and compatible program to implement the authority. The Commonwealth has decided not to seek authority for evaluation of sealed sources and devices.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

Commonwealth of Virginia: NRC Staff Assessment of a Proposed Agreement  
Between the Nuclear Regulatory Commission and the Commonwealth of Virginia

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the Commonwealth of Virginia.

SUMMARY: By letter dated June 12, 2008, Governor Timothy M. Kaine of Virginia requested that the U. S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the Commonwealth of Virginia (Commonwealth or Virginia) as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would ~~give up~~ **relinquish**, and the Commonwealth would **assume** ~~take over~~, portions of the Commission's regulatory authority exercised within the Commonwealth. As required by the Act, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of an assessment by the NRC staff of the Commonwealth's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the Commonwealth's program, and the Commonwealth's program staff, as discussed in this notice.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in the Commonwealth from portions of the Commission's regulatory authority. The Act requires that the NRC publish those exemptions. Notice is hereby given that

Enclosure 3

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-08-0154 – PROPOSED AGREEMENT BETWEEN  
THE COMMONWEALTH OF VIRGINIA AND THE  
COMMISSION PURSUANT TO SECTION 274 OF THE  
ATOMIC ENERGY ACT OF 1954, AS AMENDED

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached \_\_\_\_\_ None XX

  
\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

10/27/08

Entered on "STARS" Yes ☒ No \_\_\_\_\_