[7590-01-P]

U.S. Nuclear Regulatory Commission

Commonwealth of Virginia: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Agreement Between the NRC and the Commonwealth of Virginia; Notice of Waiver Termination

[NRC-2008-0607]

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Agreement between the U.S. Nuclear Regulatory Commission and the Commonwealth of Virginia.

SUMMARY: This notice is announcing that on March 4, 2009, Dr. Dale E. Klein, Chairman of the U.S. Nuclear Regulatory Commission (NRC), and on March 18, 2009, Governor Timothy M. Kaine of the Commonwealth of Virginia signed an Agreement as authorized by Section 274b of the Atomic Energy Act of 1954, as amended (the Act). The Agreement provides for the Commission to discontinue its regulatory authority and for Virginia to assume regulatory authority over the possession and use of byproduct material as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(4) of the Act, source material, and special nuclear materials (in quantities not sufficient to form a critical mass). Under the Agreement, a person in Virginia possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the *Federal Register* (FR) and are codified in the Commission's regulations as 10 CFR Part 150. The Agreement is published here as required by Section 274e of the Act.

NOTICE OF WAIVER TERMINATION: On March 31, 2009, the Commission terminated the time-limited waivers of the Energy Policy Act of 2005 requirements granted by the Commission

(70 FR 51581; August 31, 2005) to Virginia for byproduct material as defined in Sections 11e.(3), and 11e.(4) of the Act.

FOR FURTHER INFORMATION CONTACT: Monica Orendi, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-3938; e-mail: monica.orendi@nrc.gov.

SUPPLEMENTARY INFORMATION: The NRC published the draft Agreement in the FR for comment once each week for 4 consecutive weeks on November 20, 2008 (73 FR 70384), November 26, 2008 (73 FR 72080), December 4, 2008 (73 FR 73961), and December 11, 2008 (73 FR 75470) as required by the Act. The public comment period ended on December 22, 2008. The Commission received one comment letter. The comment did not affect the NRC staff's assessment, which finds that the Virginia Agreement materials program is adequate to protect public health and safety and compatible with the NRC's program. The proposed Virginia Agreement is consistent with Commission policy and thus meets the criteria for an Agreement with the Commission.

After considering the request for an Agreement by the Governor of Virginia, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Virginia Department of Health, the NRC staff completed an assessment of the Virginia program. The agency made a copy of the staff assessment available in the NRC's Public Document Room (PDR) and electronically on NRC's Web site. Based on the staff's assessment, the Commission determined on February 27, 2009, that the proposed Virginia program for control of radiation hazards is adequate to protect public health and safety, and compatible with the Commission's program.

Documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Documents referred to in this notice and other publicly available documents are available electronically at the NRC's Public Electronic Reading Room on the Internet at the NRC Web site, http://www.nrc.gov/reading-rm/adams.html. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland, this 26th day of March, 2009.

For the Nuclear Regulatory Commission.

/RA/

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Annette L. Vietti-Cook,
Secretary of the Commission.

AN AGREEMENT
BETWEEN
THE UNITED STATES NUCLEAR REGULATORY COMMISSION
AND
THE COMMONWEALTH OF VIRGINIA
FOR THE
DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY
AND
RESPONSIBILITY WITHIN THE COMMONWEALTH PURSUANT TO
SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, The United States Nuclear Regulatory Commission (the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 *et seq*. (the Act), to enter into agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

WHEREAS, The Governor of the Commonwealth of Virginia is authorized under the Code of Virginia Section 32.1-235, to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the Commonwealth of Virginia certified on June 12, 2008, that the Commonwealth of Virginia (the Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on February 27, 2009 that the program of the Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

WHEREAS, The Commonwealth and the Commission recognize the desirability and importance of cooperation between the Commission and the Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the Commonwealth recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, This Agreement is entered into pursuant to the provisions of the Act;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the Commonwealth acting on behalf of the Commonwealth as follows:

ARTICLE I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;

2. Byproduct materials as defined in Section 11e.(3) of the Act;

3. Byproduct materials as defined in Section 11e.(4) of the Act;

4. Source materials; and

5. Special nuclear materials in quantities not sufficient to form a critical mass.

ARTICLE II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;

4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;

5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

6. The regulation of byproduct material as defined in Section 11e.(2) of the Act;

7. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons.

ARTICLE III

With the exception of those activities identified in Article II.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.

ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

ARTICLE VI

The Commission will cooperate with the Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that Commission and Commonwealth programs for protection against hazards of radiation will be coordinated and compatible.

The Commonwealth agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The Commonwealth and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The Commonwealth and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

ARTICLE VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the Commonwealth agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the Commonwealth, or upon request of the Governor of the Commonwealth, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the Commonwealth has not complied with one or more of the requirements of Section 274 of the Act.

The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act which requires a Commonwealth program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE IX

This Agreement shall become effective on March 31, 2009, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, MD, in triplicate, this 4th day of March, 2009.

FOR THE UNITED STATES NUCLEAR
REGULATORY COMMISSION

/RA/

Dale E. Klein, Chairman

Done at Richmond, Virginia, in triplicate this 18th day of March, 2009.

FOR THE COMMONWEALTH OF VIRGINIA

/RA/

Timothy M. Kaine, Governor