ENCLOSURE 3

NRC STAFF ASSESSMENT
OF THE NEW JERSEY PROGRAM

ASSESSMENT OF THE PROPOSED
NEW JERSEY PROGRAM FOR THE REGULATION OF AGREEMENT MATERIALS
AS DESCRIBED IN THE REQUEST FOR AN AGREEMENT

This Assessment examines the proposed State of New Jersey Program with respect to the ability of the program to regulate the possession, use, and disposal of radioactive materials subject to the Atomic Energy Act of 1954 (Act), as amended.[1] This Assessment was performed using the criteria in the Commission's Policy Statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (referred to below as the "criteria")[2] using the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700 "Processing an Agreement." Each criterion, and the staff assessment related thereto, is addressed separately below.

OBJECTIVES

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

The proposed Agreement State Program for the State for regulating radioactive materials is located in the Bureau of Environmental Radiation (BER) within the New Jersey Department of Environmental Protection (NJDEP). NJDEP is a cabinet-level department with its commissioner reporting directly to the Governor of New Jersey.

NJDEP has the statutory authority to establish the Agreement State Program and to implement it by the Radiation Protection Act (N.J.S.A. 26:2D-1), the Administrative Procedures Act (N.J.S.A.52:14B-1 et seq.), and the Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act.

The authorities to issue, amend, suspend or revoke licenses; place conditions and to issue orders; or assess administrative fines is vested by Statute in the Radiation Protection Act, N.J.S.A. 26:D-7 and 26:D-9.

[1]According to paragraph (a) of Section 274, the radioactive materials subject to the Act are byproduct, source and special nuclear materials.

[2]U.S, Nuclear Regulatory Commission (NRC) Statement of Policy published in the *Federal Register* (FR), January 23, 1981 (46 FR 7540-7546), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the FR, July 21, 1983 (48 FR 33376).

NRC staff verified that the State's Agreement State Program design for distributing regulatory responsibilities to the program staff is similar to designs used successfully in other Agreement States, and that all necessary program elements have been addressed.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

RADIATION PROTECTION STANDARDS

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**.

In conjunction with the rulemaking authority vested in the New Jersey Commission on Radiation Protection by New Jersey Statute 26:2D-7 of the Radiation Protection Act, BER has the requisite authority to promulgate rules for protection against radiation.

NRC staff verified that the State adopted the relevant NRC regulations in Title 10 Code of Federal Regulations (CFR) Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150 into State regulations, New Jersey Administrative Code (N.J.A.C.) Title 7 Section 28, Radiation Protection Programs. The State has 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 staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

3. Uniformity of 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 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.**

The State, by statute, must promulgate and enforce rules for the regulation of byproduct, source, and special nuclear material that are in accordance with Section 274 of the Act, as amended. NRC staff verified that the State adopted regulations compatible with 10 CFR Part 20, "Standards for Protection Against Radiation."

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

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.**

NRC staff verified that the State 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. State 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, State licensees are required to consider the radiation dose whether the sources are licensed or unlicensed.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

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.**

NRC requires surveys and monitoring pursuant to Subpart F of 10 CFR Part 20. NRC staff verified that the State has adopted regulations compatible with 10 CFR Part 20 Subpart F. Therefore, State licensees are required to conduct surveys and personnel monitoring to the same standards required of NRC licensees.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS:

ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

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.**

   NRC staff verified that the State has adopted regulations compatible with the NRC regulations in Subpart J of 10 CFR Part 20; therefore, the radiation labels, signs, symbols, and the posting and labeling requirements in the State regulations are compatible with those contained in the NRC regulations.

   The staff concludes that this criterion is satisfied.

   References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

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.**

   NRC staff verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Part 19, “Notices, Instructions, and reports to Workers; Inspection and Investigations.”

   The staff concludes that this criterion is satisfied.

   References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

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

   NRC staff verified that the State has adopted regulations compatible with the NRC regulations in Subpart I of 10 CFR Part 20. These regulations address security of stored material and control of material not in storage.

   The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

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 Part 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.**

NRC staff confirmed that the State has adopted regulations that are compatible with the NRC regulations in Subpart K of 10 CFR Part 20. These regulations deal with general requirements for waste disposal and are applicable to all licensees.

The staff concludes that Criterion 9(a) is satisfied.

(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).

NRC staff verified that the State has adopted regulations containing licensing requirements for land disposal of radioactive waste received from other persons that are compatible with the applicable technical definitions, performance objectives, technical requirements, and applicable supporting sections set forth in 10 CFR Part 61, “Licensing Requirements for Land Disposal of Radioactive Waste.”

The staff concludes that Criterion 9(b) is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710,

ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

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.**

    NRC staff verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Part 71, "Packaging and Transportation of Radioactive Material." The State's regulations specifically exempt areas of exclusive NRC jurisdiction.

    The staff concludes that this criterion is satisfied.

    References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

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.**

    NRC staff verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150. The records and reports referenced in Criterion 11 are regulatory requirements in these parts. The State has adopted the necessary record and reporting requirements.

    The staff concludes that this criterion is satisfied.

    References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

12. Additional Requirements and Exemptions. **Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional**

requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

NRC staff verified that the State has adopted a regulation that is compatible with 10 CFR 30.34 and 40.41, Terms and conditions of licenses, in N.J.A.C. 7:28-51.1 and 7:28-58.1, respectively. The State regulations provide the radiation control agency authority to impose, by order or license condition, additional health and safety requirements beyond the requirements specified in law and in the rules. The agency also has legal authority to grant reasonable and necessary exceptions to the regulatory requirements, either by order or by license condition.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

PRIOR EVALUATION OF USES OF RADIOACTIVE MATERIALS

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 State has adopted regulations containing regulatory requirements for applying for and issuing licenses that are compatible with NRC's regulations.

NRC staff confirmed that the State'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 NRC, unless the State requests assumption of the authority and has in place an adequate and compatible program to implement the authority. The State has decided not to seek authority for evaluation of sealed sources and devices.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

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 regulatory guides for various categories of licensed activities.**

NRC staff determined that the State has established a series of procedures, checklists, and forms to be used in evaluating proposals for radioactive materials use. These will be used in addition to the licensing guidance in the NRC's NUREG-1556 series, entitled "Consolidated Guidance About Materials Licenses." In addition, the State developed administrative licensing procedures that define the review process for a new license application, amendment, renewal, and license termination. The State licensing procedures are similar to NRC procedures.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

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.**

NRC staff verified that the State has adopted compatible regulations to the NRC regulations in 10 CFR Part 35, "Medical Use of Byproduct Material;" therefore, the State's regulations include training and experience requirements for use of radioactive material that are equivalent to the NRC requirements.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

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 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 insure compliance.**

NRC staff confirmed that the State has statutory authority to conduct inspections of licensees. The State has adopted regulations compatible with equivalent parts of the NRC regulations containing provisions relating to inspections and tests.

The State has adopted a schedule for inspection of licensees at least as frequent as the schedule used by NRC, established in Inspection Manual chapter 2800, "Materials Inspection Program." The State staff has developed internal procedures and accompanying forms for the inspection areas that cover scheduling, preparation, performance basis, tracking and documentation of inspection results. The State inspection procedures are similar to NRC procedures.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

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

NRC staff confirmed that State law provides authority for radiation control program inspectors to enter public or private property at all reasonable times for the purpose of investigating conditions related to radiation use.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710,

ML090510711, ML090510712, and ML090770116). State Statute: 26:2D-9. State Regulations N.J.A.C. Title 7 Chapter 28.

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.**

NRC staff determined that the State has adopted procedures to convey a copy of the formal inspection reports to the applicable licensees, both when violations are found and when no violations are found. The State's procedures identify the responsible staff and specify the time limits for preparing the inspection reports, the process for management reviews and approvals, and provide instructions for distribution of the reports to the licensees and to the State's official files.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

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.**

NRC staff confirmed that the State is authorized by law to enforce the State's regulations using a variety of sanctions, including the imposition of administrative fines; the issuance of orders to suspend, modify or revoke licenses; and any other action deemed appropriate by the Program. The Program may assess civil penalties in accordance with State Law and Department regulations.

The Program has adopted policies and procedures to implement the enforcement authority. The State enforcement procedures are similar to NRC procedures with regard to the use of severity levels for violations.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statutes: 26:2D-1, 26:2D-2,

26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2, 26:2D-13, 26:2D-22, 26:2D-23.4, 26:2D-36, 26:2D-57, 26:2D-77. State Regulation: N.J.A.C. 7:28-2.13.

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 inspections 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 of 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 science, 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 are out of the ordinary. These people 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 the 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, the 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.

Based on the review of the organizational charts and position descriptions for BER, the BER training and qualification plan, and the curricula vitae for the current staff members, NRC staff concludes that BER has a staffing plan that provides a sufficient number of adequately trained and qualified technical staff.

a. Assessment of the Agreement Materials Staffing

There are about 500 NRC specific licenses in the State. The State currently conducts a licensing and inspection program for about 500 naturally-occurring or accelerator-produced radioactive material (NARM) users. About 300 of these NARM users currently have an NRC license. When the NRC and State licenses are combined, there will be approximately 700 specific licenses in New Jersey. Additionally, there are over 400 general license registrations.

The staff of the Radioactive Materials Section (RMS), in BER, will be responsible for implementing the majority of the Agreement State Program. The Radiological Assessment Section, in BER, will be responsible for the remainder of the Agreement State Program, including decommissioning, low-level radioactive waste disposal site regulation, and will provide assistance with nuclear medicine licensees, Increased Controls and general license registration.

The State conducted an analysis of the expected workload to establish an appropriate staffing plan. The State estimates that there will be approximately 700 specific licenses after the NRC and State licenses are combined. The State has determined that 13.25 full-time equivalent (FTE) is adequate for operating the Agreement State Program. This projection is based on data from the NRC, Agreement States, and BER's own internal information. NRC staff reviewed the State's analysis and concludes that the State adequately analyzed its program needs in determining an appropriate staffing plan. The State's staffing plan of 13.25 FTE for the Agreement State Program will be adequate to handle the anticipated workload.

At the time of the NRC review of the application, there was one vacant technical position in BER to support the Agreement State Program. This position has been filled and the individual was on staff April 15, 2009. There are currently 10.5 FTE (technical staff) devoted to support the Agreement State Program, which includes the RMS Supervisor. The RMS Supervisor will provide the day-to-day supervision of the Agreement State Program. The Supervisor plans on devoting 100 percent of his time to the Agreement State Program, including management review of licensing and inspection actions, personnel responsibilities, rule development, and accompaniment of inspectors for annual management review. The BER Bureau Chief will devote 35 percent of her time to the Agreement State Program, including management review of certain actions, personnel responsibilities, and rule development. There are two staff members that provide 2.0 FTE of administrative support to the program and one staff member that will devote 40 percent of her time providing management assistance to the Agreement State Program. The staff will work in all aspects of the materials program, including licensing, inspection, enforcement, emergency response, and rule development. NRC staff concludes that BER has an adequate number of staff to transition to and meet the anticipated needs of the Agreement State Program.

The staff concludes that criterion 20(a) is satisfied.

b. Assessment of Staff Qualifications

NRC staff considered the qualifications of the individuals currently on the BER staff that would be involved in the Agreement State Program and the procedures for training and qualifying new staff members.

Under the proposed Agreement, BER will implement the Agreement State Program. The BER Bureau Chief has a Bachelor of Arts degree in Biology and has completed graduate course work in Radiation Science. She has 28 years of experience with NJDEP, first as a radiation physicist and then as a manager, within a variety of program areas including radioactive materials, decommissioning/site remediation, radioanalytical laboratory program, and emergency response.

The RMS Supervisor will be responsible for the Program's administration and will provide the immediate day-to-day supervision of the Agreement State Program. The RMS Supervisor has a Bachelor of Science in Biology, a Master of Science in Radiation Science, and a Nuclear Medicine Certification. He has about 25 years of experience in all aspects of the NJDEP programs – licensing and inspection of NARM licenses, radiation measurements, calibration, laboratory design, and emergency response. Additionally, he has experience as a nuclear medicine technologist, responsible for the preparation and use of radiopharmaceuticals for diagnostic and therapeutic purposes and the operation of clinical nuclear medicine instruments.

All other staff members have a Bachelor of Science degree in one of the following subject areas: environmental science, nuclear engineering, earth sciences, chemistry, physics, and biochemistry, with one person also possessing a Bachelor of Science degree in mathematics. Additionally, five of these staff

members have a Master of Science in Radiation Science, one staff member has a Master of Business Administration, and another has begun graduate work in environmental policy studies.

The majority of the BER technical staff has extensive health physics and radiation science experience within NJDEP, as well as work experience in the private sector. Staff has work experience in nuclear engineering; as a radiation safety officer in medical and radiopharmaceutical facilities, environmental protection and remediation, and with radiopharmaceutical production. The technical staff has completed or is scheduled to complete the NRC-recommended core courses by the effective date of the Agreement, or has received waivers from BER based on prior training and experience. The individual hired in April 2009 is scheduled to complete three of the NRC-recommended core courses by the effective date of the Agreement. This individual may need up to 2 years to complete all of the NRC-recommended core courses due to availability and scheduling of classes.

BER has maintained a strong NARM program for many years regulating approximately 500 NARM licensees. Consequently, the majority of staff currently with the Program has extensive licensing and inspection experience. The BER technical staff has accompanied NRC staff on inspections of NRC licensees in the State and is continuing to accompany NRC on more inspections in preparation for the transition to an Agreement State.

NRC staff believes that the BER technical staff identified by the State to work in the Agreement State Program are trained in accordance with the BER plans, have sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and techniques of inspecting licensed users of radioactive materials.

NRC staff concludes that BER has a sufficient number of adequately trained staff to transition to the Agreement State Program and to meet program needs.

The staff concludes that criterion 20(b) is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116).

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.**

NRC staff did not identify any aspects of the proposed Agreement State Program that could potentially interfere with duties imposed on a holder of materials by NRC. In addition, the State's regulations specifically exempt areas of exclusive NRC or other

Federal jurisdiction from State regulation. The staff is satisfied that the State will not interfere with duties imposed on the holder of materials by NRC.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

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 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 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:**

175 (grams contained U-235)/350 + 50 (grams U-233)/200 + 50 (grams PU)/200 = 1

NRC staff determined that the State's definition of special nuclear material in quantities not sufficient to form a critical mass in N.J.A.C 7:28-62.1 is compatible with that of the Commission's.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

ADMINISTRATION

23. Fair and Impartial Administration. **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 process and use radioactive materials; and
c. Taking disciplinary actions against licensees.

NRC staff confirmed that BER is bound by general statutory provisions with respect to providing the opportunity for public participation in rulemaking, licensing actions, and disciplinary actions. These general statutory provisions also apply to the protection of personnel radiation exposure records from public disclosure, maintaining the confidentiality of allegers, and administrative and judicial requirements for requesting and holding hearings on enforcement matters.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statute: N.J.S.A. 52:14B-1 and 2 et seq. and N.J.S.A. 26:2D-7. State Regulation: N.J.A.C. Title 7 Chapter 28 and N.J.A.C. 7:1D-1.1

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.**

NRC staff determined that NJDEP is designated by State Statute 26:2D-9 to be the lead agency for carrying out the terms of the proposed Agreement, which will assure against duplicate regulations or licensing by State and local authorities. NRC staff determined that the State regulations specifically exclude any areas in which the jurisdiction of NRC or another Federal agency is exclusive, and also give sufficient assurance against duplicate regulation between the State and NRC in the regulation of radioactive materials under the Agreement.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statute: 26:2D-3, 26:2D-6, 26:2D-8, 26:2D-9 and 26:D-17.

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.**

NRC staff confirmed that State Statute 26:2D-9 contains a provision that provides for recognition of existing NRC and Agreement State licenses. State procedure BER 3.08, "License Transition from NRC to New Jersey," addresses the transfer of NRC licenses to the State. N.J.A.C. 7:28-62.1 provides a process for recognition of other Agreement State licenses and N.J.A.C. 7:28-64.6 establishes the fees for reciprocity of other State licenses.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, ML090770116). State Regulation N.J.A.C. Title 7 Chapter 28.

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.**

NRC staff verified that the proposed Agreement commits the State to cooperate with NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to ensure that the State will continue to be compatible with the NRC's program for the regulation of radioactive materials covered by the Agreement.

In a revised Policy Statement on Adequacy and Compatibility of Agreement State Programs (published September 3, 1997 at 62 FR 46517), the Commission determined that providing reports to NRC of Agreement State licensee incidents, accidents and other significant events is a matter of compatibility. The State has adopted procedures to provide such reports to NRC.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statute: N.J.S.A. 26:D-9. State Regulations: N.J.A.C. Title 7 Chapter 28.

27. Coverage, Amendments, Reciprocity. **An amendment 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 material as defined in Section 11e(1) of the Act,
b. Byproduct material as defined in Section 11e(2) of the Act,
c. Byproduct material as defined in Section 11e(3) of the Act,

d. Byproduct material as defined in Section 11e(4) of the Act,
e. Source material,
f. Special nuclear material in quantities not sufficient to form a critical mass,
g. 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.

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

NRC staff verified that the proposed Agreement provides for NRC to relinquish, and the State to assume, regulatory authority over the types of material defined in categories a, c, d, e, f, and g above.

Since this criterion was adopted, the Commission has determined that the Agreement States may assume the authority to evaluate the safety of sealed sources and devices to be distributed in interstate commerce as a separate portion of the Agreement, or to allow NRC to retain that authority. The State has chosen not to assume that authority.

The proposed Agreement stipulates the desirability or reciprocal recognition of NRC and other Agreement State licenses, and commits NRC and the State to cooperate to accord such reciprocity. The State's regulations provide for the reciprocal recognition of licenses from other jurisdictions.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statute: N.J.S.A. 26:D2-9. State Regulations N.J.A.C. Title 7 Chapter 28.

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 site;

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 there under 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.

NRC staff verified that the State has adopted compatible regulations to NRC regulations in 10 CFR Parts 30, 40 and 70 including §30.12, §40.11, and §70.11 wherein the specified exemptions are contained. NRC staff concludes that the State regulations do provide for exemptions from the State's requirements for licensing of sources of radiation for NRC and DOE contractors or subcontractors in accordance with the criterion.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

STAFF CONCLUSION

NRC staff has reviewed the proposed Agreement, the certification by the State in the application for an Agreement in the letter dated October 16, 2008, from Governor Corzine to Chairman Klein, and the supporting information provided BER.

Section 274d. of the Act provides that the Commission shall enter into an Agreement under Section 274b. with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Section 274o. and in all other respects compatible with the NRC's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The staff concludes that:

On the basis of this Assessment, the State of New Jersey meets the requirements of the Act. The Agreement State Program, as defined by the State statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the NRC's program and

adequate to protect public health and safety with respect to the radioactive materials covered by the requested Agreement.