[7590-01-P]

Nuclear Regulatory Commission

[NRC-2009-0142]

State of New Jersey: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Agreement Between the Nuclear Regulatory Commission and the State of New Jersey

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Agreement between the U.S. Nuclear Regulatory Commission and the State of New Jersey.

SUMMARY: This notice is announcing that on September 2, 2009, Gregory B. Jaczko, Chairman of the U.S. Nuclear Regulatory Commission (NRC or Commission), and on September 23, 2009, Governor Jon S. Corzine, of the State of New Jersey, 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 New Jersey to assume regulatory authority over the possession and use of byproduct material as defined in Sections 11e.(1), 11e.(3), and 11e.(4) of the Act, source material, special nuclear materials (in quantities not sufficient to form a critical mass), and the regulation of land disposal of byproduct, source, or special nuclear material waste received from other persons. Under the Agreement, a person in New Jersey 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.

DATES: The effective date of the Agreement is September 30, 2009.

ADDRESSES: You can access publicly available documents, including public comments related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at http://www.nrc.gov/reading-rm/adams.html. From this page, the public can gain entry into 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's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS Accession numbers for the request for an Agreement by the Governor of New Jersey, including all information and documentation submitted in support of the request, and the NRC Draft Staff Assessment are: ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, ML090770116, and ML091400097.

FOR FURTHER INFORMATION CONTACT: Torre Taylor, 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) 415-7900; e-mail: torre.taylor@nrc.gov.

SUPPLEMENTARY INFORMATION: The NRC published the draft Agreement in the *FR* for comment once each week for 4 consecutive weeks on May 27, 2009 (74 FR 25283), June 3, 2009 (74 FR 26739), June 10, 2009 (74 FR 27572), and June 17, 2009 (74 FR 28728),

as required by the Act. The comment period ended on June 26, 2009. The Commission received six comment letters – two supporting the Agreement, two opposed, one that supported the rationale of States assuming regulatory authority but not the fee differences that will occur, and one general comment that did not express support or opposition. The comments did not affect the NRC staff's assessment, which finds that the New Jersey Agreement State program is adequate to protect public health and safety and compatible with the NRC's program. The proposed New Jersey 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 New Jersey, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the New Jersey Department of Environmental Protection, the NRC staff completed an assessment of the New Jersey 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 September 2, 2009, that the proposed New Jersey program for control of radiation hazards is adequate to protect public health and safety, and compatible with the Commission's program.

Dated at Rockville, Maryland, this 2nd day of October 2009.

For the Nuclear Regulatory Commission.

/RA/

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J. Samuel Walker,
Acting Secretary of the Commission.

AN AGREEMENT
BETWEEN
THE UNITED STATES NUCLEAR REGULATORY COMMISSION
AND
THE STATE OF NEW JERSEY
FOR THE
DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY
AND
RESPONSIBILITY WITHIN THE STATE 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*. (hereinafter referred to as 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 State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (2), (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 State of New Jersey is authorized under The Radiation Protection Act, N.J.S.A. 26:2D-1, to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State of New Jersey certified on October 16, 2008, that the State of New Jersey (the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on September 2, 2009, that the program of the State 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 State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State 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 State acting on behalf of the State 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 State 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;

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

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

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.

ARTICLE III

With the exception of those activities identified in Article II.1 through 4, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the State 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 State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible.

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

The State 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 State 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 State 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 State 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 State, or upon request of the Governor of the State, 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 State 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 State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State 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 September 30, 2009, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this 8th day of September, 2009.

FOR THE UNITED STATES NUCLEAR
REGULATORY COMMISSION

/RA/

Gregory B. Jaczko, Chairman.

Done at Trenton, New Jersey, in triplicate, this 23rd day of September, 2009.

FOR THE STATE OF NEW JERSEY

/RA/

Jon S. Corzine, Governor.