



UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

50-247 (Journal)

JUL 27 1966

Mr. Clarence F. Pautzke
Commissioner
Fish and Wildlife Service
U. S. Department of the Interior
Washington, D. C. 20240

Dear Mr. Pautzke:

Thank you for the report of the Fish and Wildlife Service, attached to your letter of July 13, 1966, concerning the effect upon fish and wildlife of the proposed nuclear power plant of the Consolidated Edison Company of New York, Inc., Indian Point Nuclear Generating Unit No. 2, Buchanan, New York (Docket No. 50-247).

With respect to the comments on page 2 of your letter concerning the potential hazards from other than radioactive materials, the Atomic Energy Commission's regulatory jurisdiction is limited essentially to matters of radiological health and safety and the common defense and security. The Commission is without statutory authority to impose conditions in its licenses relating to the thermal and other non-radiological effects of the licensed activities. This position was explained in a letter, dated May 2, 1966, from our General Counsel to the Solicitor of the Department of the Interior. It was also reflected in our testimony last May 13 before the House Committee on Merchant Marine and Fisheries on H. R. 14455, H. R. 14414 and H. R. 9492.

With respect to the comments on page 1 of your letter concerning the State of New York, the AEC and the State of New York are presently engaged in a cooperative relationship governing the regulation of nuclear materials. The essential elements of that relationship are set forth in an agreement entered into by the State and the AEC and in an implementing memorandum of understanding. Both documents are attached.

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Mr. Clarence F. Pautzke

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We have been advised by the Consolidated Edison Company that there have been several informational meetings between the Company and representatives of various New York State agencies, including the State Conservation Department, concerning operation of the Indian Point plant; that frequent inspections of the plant have been made by State officials; that such meetings and plant visits will continue in the future; and that the Company would be very pleased to have Fish and Wildlife representatives participate. We have also been advised that the Company is supporting financially a Hudson River Fisheries study which includes the waters in the vicinity of Indian Point; that this study is directed by a policy committee consisting of Mr. E. L. Cheatum, Assistant Commissioner of Conservation, New York State, as Chairman; Mr. Thomas H. Schraeder, Assistant Regional Director, Fish and Wildlife Service; and Mr. A. S. Pearson, Consolidated Edison; and that Mr. Cheatum has been kept informed of the results of the thermal pollution study made at Indian Point and on a model at Alden Laboratories.

If you desire to discuss these matters further, please let me know.

Sincerely yours,

(signed) Harold L. Price

Harold L. Price
Director of Regulation

Enclosures:

1. Agreement
2. Memorandum of Understanding

U. S. ATOMIC ENERGY COMMISSION

(Reprinted from 27 Federal Register, 10419, October 25, 1962)
Notice of Agreement with the State of New York
Effective October 15, 1962

ATOMIC ENERGY COMMISSION
NOTICE OF AGREEMENT WITH THE
STATE OF NEW YORK

Agreement between the United States Atomic Energy Commission and the State of New York for 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 Atomic Energy Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended, (hereinafter referred to as the Act) to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas the Governor of the State of New York is authorized under section 462 of the New York State Atomic Energy Law to enter into this Agreement with the Commission; and

Whereas the Governor of the State of New York certified on July 20, 1962, that the State of New York (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the 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 information as to the Radiation Control Program within the State of New York was submitted to the Commission on July 20, 1962, August 30, 1962, and October 8, 1962; and

Whereas the Commission found on October 12, 1962, 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 the 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 reciprocal recognition of licenses and exemption from licensing of those materials subject to this Agreement;

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

Article I. Subject to the exceptions provided in Articles II, III, and IV, 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:

- A. Byproduct materials;
- B. Source materials; and

C. 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 regulation of:

A. The construction and operation of any production or utilization facility;

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

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

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

Article III. 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 IV. This Agreement shall not affect the authority of the Commission under subsection 161 b or i 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 V. The Commission will use its best efforts to 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 State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts 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 like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VI. The Commission and the State agree that it is desirable to provide for reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VII. The Commission and the State recognize that the limits on their respective rights, powers and responsibilities under the Constitution, with respect to protection against radiation hazards arising out of the activities licensed by the Commission within the State, are not precisely clear. The Commission and the State agree to work together to define, within a reasonable time, the limits of, and to provide mechanisms for accommodating, such responsibilities of both parties. Without prejudice to the respective rights, powers and responsibilities of Federal and State authority, the State undertakes to obtain promptly and to maintain in effect while such cooperative endeavors are in progress, a modification of the Health, Sanitary and Industrial Codes which are to become effective within the State as of October 15, 1962, so as to exempt

(except for registration; notification; inspection, not including operational testing but including sampling which would not substantially interfere with or interrupt any Commission licensed activities; and routing and scheduling of material in transit) licensees of the Commission from so much of such Codes as pertain to protection against radiation hazards arising out of activities licensed by the Commission within the State. While such cooperative endeavors are in progress, the existence or nonexistence of the exemptions and exceptions referred to above shall not prejudice the exercise by the Commission or the State, in an emergency situation presenting a peril to the public health and safety, of any constitutional rights and powers the Federal Government or the State may have now or in the future. If such cooperative endeavors do not result in a definition, within a reasonable time, of the limits of, and provision of mechanisms for accommodating, the responsibilities of the Commission and the State with respect to protection against radiation hazards arising out of the activities licensed by the Commission within the State, then the existence or nonexistence of the exemptions and exceptions referred to above shall not prejudice the exercise by the Commission or the State of any constitutional rights and powers the Federal Government or the State may have now or in the future.

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 this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds

that such termination or suspension is required to protect the public health and safety.

Article IX. This Agreement shall become effective on October 15, 1962, and shall remain in effect unless, and until such time as it is terminated pursuant to Article VIII.

Done at Washington, District of Columbia, in triplicate, this 15th day of October 1962.

For the United States Atomic Energy Commission.

GLENN T. SEABORG,
Chairman.

Done at Albany, State of New York, in triplicate, this 15th day of October 1962.

For the State of New York.

NELSON A. ROCKEFELLER,
Governor.

[F.R. Doc. 62-10664; Filed, Oct. 24, 1962;
8:47 a.m.]

MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding between the United States Atomic Energy Commission and the State of New York for implementation of certain provisions contained in Agreement between the United States Atomic Energy Commission and the State of New York, effective on October 15, 1962, for discontinuance of certain Commission regulatory authority and responsibility within the State pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

The United States Atomic Energy Commission (hereinafter referred to as the "Commission") and the State of New York (hereinafter referred to as the "State") entered into the above-described Agreement on October 15, 1962.

The Commission and the State recognized, in Article VII of that Agreement, that the limits on their respective rights, powers and responsibilities under the United States Constitution, with respect to protection against radiation hazards arising out of the activities licensed by the Commission within the State, are not precisely clear.

The Commission and the State agreed, among other things, in Article VII to work together to define, within a reasonable time, the limits of, and to provide mechanisms for accommodating, such responsibilities of both parties.

The Commission and the State have now agreed upon certain mechanisms for accommodating their interests.

In view of the foregoing, it is agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

(1) The Commission will furnish promptly to the State, without charge, one copy of each of the below-described documents (except those documents the disclosure of which would be contrary to law and except those documents which are excluded from the Commission's public records pursuant to Part 9 of the Commission's Rules and Regulations) relating to activities authorized or sought to be authorized within the State under a specific license from the Commission: (a) Specific licenses issued by the Commission; and (b) with respect only to production or utilization facilities and activities involving the receipt of waste radioactive material from other persons for the purpose of packaging, storage or disposal, (i) filings in Commission proceedings, (ii) correspondence between the Commission and its licensees or license applicants regarding the issuance, denial, amendment, interpretation, enforcement, transfer, renewal, modification, suspension, or revocation of a Commission license, and (iii) notices filed in the Commission's Public Document Room to the effect that other documents have not been filed therein. The Commission will also furnish to the State, without charge, one copy of such other documents, relating to activities authorized or sought to be authorized within the State under a specific license from the Commission, as may be reasonably requested by the State and the disclosure of which to the State is not contrary to law or the public interest.

(2) Representatives of the Commission's regulatory staff and the State will meet from time to time to advise and consult, and to exchange information, concerning production or utilization facilities, and

activities involving the receipt of waste radioactive material from other persons for the purpose of packaging, storage or disposal, authorized or sought to be authorized within the State under Commission license. Opportunity will be given to representatives of the State for at least one meeting with the Commission's regulatory staff prior to Commission publication in the FEDERAL REGISTER of a notice scheduling a hearing, or of a notice of proposed action in non-hearing cases, on applications for a construction permit or license for such a facility or activity, and for such additional meetings as the State may reasonably request.

(3) The Commission will notify the State immediately of any theft or loss of material within the State reported to the Commission by a Commission licensee. The Commission will also notify the State immediately of any incident within the State, reported to the Commission by a Commission licensee, for which immediate notification is required to be made by the licensee to the Commission under the Commission's Rules and Regulations.

(4) It is a mutual objective of the Commission and the State to avoid dual regulation for purposes of protection against radiation hazards of activities licensed by either party within the State. Accordingly, and in view of paragraph (5) and the other provisions of this Memorandum of Understanding: (a) The State will use its best efforts to exempt activities licensed by the Commission from State regulations which are directed toward protection against radiation hazards from those radiation sources which are regulated by the Commission; (b) the foregoing undertaking shall not apply to reasonable State requirements

for (i) access by State representatives to records which Commission licensees are required to maintain pursuant to the Commission's Rules and Regulations or the provisions of a Commission license, (ii) sampling of effluents by State representatives, (iii) such measuring or surveying by State representatives of levels of radiation and radioactive contamination as will not substantially interfere with or interrupt any activities licensed by the Commission, (iv) routing and scheduling of material in transit, and (v) access by State representatives to facilities of Commission licensees in order to accomplish the foregoing.

(5) Nothing in this Memorandum of Understanding shall be construed as defining or affecting the respective rights and powers of the Commission or the State under the United States Constitution, nor as affecting in any way the rights and privileges of any third party. In view of the mechanisms provided in this Memorandum of Understanding for accommodating the interests of the parties, the Commission and the State consider any attempt to define the limits of the rights and powers of the parties to be unnecessary.

(6) Either the Commission or the State may, with or without cause, terminate this Memorandum of Understanding, either in whole or in part, by thirty days' written notice to the other party.

(7) This Memorandum of Understanding shall become effective thirty (30) days after signature of both parties and shall remain in effect unless and until such time as it is terminated pursuant to paragraph (6).

Done at Washington, District of Columbia, in triplicate, this
14th day of April, 1965.

FOR THE UNITED STATES ATOMIC ENERGY COMMISSION.

Glenn T. Seaborg, Chairman

Done at Albany, State of New York, in triplicate, this day
of , 1965.

FOR THE STATE OF NEW YORK.

Nelson A. Rockefeller, Governor