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NUCLEAR REGULATORY COMMISSION

State of New Jersey: NRC Staff Assessment of a Proposed Agreement
Between the Nuclear Regulatory Commission and the State of New Jersey

[NRC-2009-0142]

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the State of New Jersey.

SUMMARY: By letter dated October 16, 2008, Governor Jon S. Corzine of New Jersey requested that the U. S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of New Jersey (State or New Jersey) as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

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

The proposed Agreement would exempt persons who possess or use certain radioactive materials in the State from portions of the Commission's regulatory authority. The Act requires that the NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the *Federal Register* and are codified in the Commission's regulations as 10 CFR Part 150.

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DATES: The comment period ends (insert 30 days after date of publication). Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the comment period ends.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rulemaking and Directives Branch, MS TWB-05-B01M, Division of Administrative Services, Office of Administration, Washington, DC 20555-0001. Members of the public are invited and encouraged to submit comments electronically to <http://www.regulations.gov>. Search on Docket ID: [NRC-2009-0142] and follow the instructions for submitting comments.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397-4209, or (301) 415-4737, or by e-mail to pdr.resource@nrc.gov.

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O-1-F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of New Jersey including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room-ADAMS Accession Numbers: ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, ML090770116,

update ML - new one for staff assessment
ml 2 staff assessment - final one - not new! Secy paper.

FOR FURTHER INFORMATION CONTACT: Torre Taylor, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-7900 or e-mail to torre.taylor@nrc.gov.

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 36 States. The Agreement States currently regulate approximately 19,000 Agreement material licenses, while the NRC regulates approximately 3,400 licenses. Under the proposed Agreement, approximately 500 NRC licenses will transfer to the State. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the *Federal Register* for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of ~~the~~ requirement.

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I. Background

(a) Section 274b of the Act provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of the materials. The radioactive materials, sometimes referred to as "Agreement materials," are: (a) byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) byproduct materials as defined in Section 11e.(3) of the Act; (d) byproduct materials as defined in Section 11e.(4) of the Act; (e) source materials ~~as defined in Section 11z. of the Act;~~ and (f) special nuclear materials ~~as defined in Section 11aa.~~ of the Act, restricted to quantities not sufficient to form a critical mass.

In a letter dated October 16, 2008, Governor Corzine certified that the State of New Jersey has a program for the control of radiation hazards that is adequate to protect public health and safety within New Jersey for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the "categories of materials") that the State requests authority over are:

- (1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act;
 - (2) The possession and use of byproduct materials as defined in section 11e.(3) of the Act;
 - (3) The possession and use of byproduct materials as defined in section 11e.(4) of the Act;
 - (4) The possession and use of source materials;
 - (5) The possession and use of 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.
- (b) The proposed Agreement contains articles that:
- i) Specify the materials and activities over which authority is transferred;
 - ii) Specify the activities over which the Commission will retain regulatory authority;
 - iii) Continue the authority of the Commission to safeguard nuclear materials and restricted data;

- iv) Commit the State and NRC to exchange information as necessary to maintain coordinated and compatible programs;
- v) Provide for the reciprocal recognition of licenses;
- vi) Provide for the suspension or termination of the Agreement; and
- vii) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of New Jersey.

(c) The regulatory program is authorized by law under the New Jersey Statute N.J.S.A. 26:2D-1, the Radiation Protection Act, which provides the Governor with the authority to enter into an Agreement with the Commission. New Jersey law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as State licenses until the licenses expire or are replaced by State-issued licenses.

The State currently regulates the users of naturally-occurring and accelerator-produced radioactive materials (NARM). The Energy Policy Act of 2005 (EPAAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and 11e.(4) of the Act, to include certain naturally-occurring and accelerator-produced radioactive materials. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPAAct requirements, which is effective through August 7, 2009. A plan to facilitate an orderly transition of regulatory authority with respect to byproduct material as defined in Sections 11e.(3) and 11e.(4) was noticed in the *Federal Register* on October 19, 2007 (72 FR 59158). Under the proposed Agreement, the State would assume regulatory authority for these

radioactive materials. The State has proposed an effective date for the Agreement of no later than September 30, 2009. If the proposed Agreement is approved before August 7, 2009, the Commission would terminate the time-limited waiver in the State coincident with the effective date of the Agreement. However, if the Agreement is not approved prior to this date, NRC would have jurisdictional authority over all uses of byproduct material within the State. These licensees would have to meet NRC regulatory requirements and would have 6 months to apply for any necessary amendments to an NRC license they already possess, or 12 months to apply for a new NRC license, if needed.

With the effective date of the New Jersey Agreement having the potential to occur after the expiration of the time-limited waiver, staff is working to ensure an efficient transition of NARM licensees in New Jersey within the legal requirements. The staff's objective is to minimize the impact to NARM licensees in New Jersey during the transition to NRC and then back to New Jersey's regulatory authority, within a short time frame (i.e., about 7 weeks).

(d) The NRC draft staff assessment finds that the New Jersey Department of Environmental Protection (NJDEP), Bureau of Environmental Radiation (BER), is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement materials.

II. Summary of the NRC Staff Assessment of the State's Program for the Control of Agreement Materials

The NRC staff has examined the State's request for an Agreement with respect to the ability of the radiation control program to regulate Agreement materials. The examination was based on 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," (46 FR 7540; January 23, 1981, as amended by Policy Statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983), and the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700; "Processing an Agreement."

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(a) Organization and Personnel. The Agreement materials program will be located within the existing BER of the NJDEP. The BER will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the BER staff members are specified in the State's personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold a bachelor of science degree in physical or life sciences, with many staff holding a master of science degree in radiation science. All have had training and work experience in radiation protection. Supervisory level staff has at least 5 years of working experience in radiation protection, with most having greater than 10 years of experience.

The State performed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, the State has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The State will employ a staff with the equivalent of 13.25 full-time professional/technical and administrative employees for the Agreement materials program.

The State has indicated that the BER has an adequate number of trained and qualified staff in place. The State has developed qualification procedures for license reviewers and inspectors which are similar to the NRC's procedures. The technical staff is accompanying NRC staff on inspections of NRC licensees in New Jersey. BER staff is also actively supplementing their experience through direct meetings, discussions, and facility visits with NRC licensees in the State, and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the BER technical staff identified by the State to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of Agreement materials.

(b) Legislation and Regulations. In conjunction with the rulemaking authority vested in the New Jersey Commission on Radiation Protection (N.J.S.A. 26:2D-7), the BER has the requisite authority to promulgate regulations for protection against radiation. The law provides BER the authority to issue licenses and orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors.

The NRC staff verified that the State adopted the relevant NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150 into New Jersey Administrative Code, Title 7, Chapter 28. The NRC staff also approved two license conditions to implement Increased Controls and Fingerprinting and Criminal History Records Check requirements for risk-significant radioactive materials for certain State licensees under the proposed Agreement. These license conditions will replace the Orders that NRC issued (EA-05-090 and EA-07-305) to these licensees that will transfer to the State. Therefore, on the proposed effective date of the Agreement, the State will have 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 NRC staff also verified that the State will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. The State has adopted NRC compatible requirements for the handling and storage of radioactive material. The State is requesting authority to regulate the land disposal of byproduct, source, and special nuclear waste materials received from other

persons. The State waste disposal requirements cover the preparation, classification, and manifesting of radioactive waste generated by State licensees for transfer for disposal to an authorized waste disposal site or broker. The State has adopted the regulations for a land disposal site but does not expect to need to implement them in the near future since the State is a member of the Atlantic Compact and has access to the waste disposal site, EnergySolutions Barnwell Operations, located in Barnwell, South Carolina.

(d) Transportation of Radioactive Material. The State has adopted compatible regulations to the NRC regulations in 10 CFR Part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. The State will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) Recordkeeping and Incident Reporting. The State has adopted compatible regulations to the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving Agreement materials.

(f) Evaluation of License Applications. The State has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The State has also developed a licensing procedure manual, along with accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. The State has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The BER has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. The State has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. The State is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The State has also adopted administrative procedures to assure fair and impartial treatment of license applicants. State law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. State ^{Law} ~~Statute~~ contains a provision that provides for the recognition of existing NRC and Agreement State licenses. New Jersey has a process in place for the transition of active NRC licenses. Upon completion of the Agreement, all active NRC licenses issued to facilities in New Jersey will be recognized as NJDEP licenses. New Jersey will issue a brief licensing document that will include licensee specific information, as well as an expiration date, with a license condition that authorizes receipt, acquisition, possession, and transfer of byproduct, source, and/or special nuclear material; the authorized use(s); purposes; and the places of use as designated on the NRC license. The license condition will also commit the licensee to conduct its program in accordance with the NRC license and commitments. The NJDEP rules will govern unless the statements, representations and procedures in the licensee's application and correspondence are more restrictive than the NJDEP rules. NJDEP will then issue full NJDEP licenses, over approximately 13 months.

The State also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. New Jersey regulations, in N.J.A.C. 28:51.1, provides ~~exemptions~~ X from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits the State to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the

regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the State to use their best efforts to accord such reciprocity.

III. Staff Conclusion

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 Subsection 274o, and in all other respects compatible with the Commission'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 NRC staff has reviewed the proposed Agreement, the certification by the State of New Jersey in the application for an Agreement submitted by Governor Corzine on October 16, 2008, and the supporting information provided by NJDEP, BER, and concludes that the State of New Jersey satisfies 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," and meets the requirements of Section 274 of the Act.

Therefore, the proposed State of New Jersey program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

Dated at Rockville, Maryland, this [] day of [month], 2009.

For the Nuclear Regulatory Commission.

insert
Directorate
name

middle initial.
Terrence — *Reis*, *Deputy*
Robert J. Lewis, ~~Director~~, *Director*
Division of Materials Safety
and State Agreements,
Office of Federal and State Materials
and Environmental Management Programs.

APPENDIX A

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 [date] 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;

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, paragraphs 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 [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland this [date] day of [month], [year].

For the United States Nuclear Regulatory Commission.

~~Dale E. Klein~~, Chairman.

Gregory B. Jeczko

Done at Trenton, New Jersey this [date] day of [month], [year].

For the State of New Jersey.

Jon S. Corzine, Governor.