

LC for IC

October , 2007

Mr. Paul Baldauf, Assistant Director
Radiation Protection Programs
Department of Environmental Protection
P. O. Box 415
Trenton, NJ 08625-0415

Dear Mr. Baldauf:

We have completed our completeness review of the New Jersey request for an Agreement. An interoffice staff team (Review Team), identified in Enclosure 1, conducted the review. The review was based on a Commission Policy Statement that provides criteria for new agreements, and followed the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700, and Handbook, *Processing an Agreement*.

The review was conducted to determine whether the proposed New Jersey Program (hereafter, the Program) met the evaluation criteria for an Agreement Program that is adequate to protect public health and safety and compatible with the U.S. Nuclear Regulatory Commission (NRC) materials program. The Review Team found that the request provided information on all major program elements and reflected significant New Jersey staff effort. However, as reflected in the comments documented in Enclosure 2, the Review Team identified a number of areas where additional information or documentation is needed. A response to the comments is requested.

For your reference, the comments are correlated to the pertinent sections of your request and the pertinent sections of the FSME Procedure SA-700 Handbook. In addition, the results of our review of the New Jersey draft Order on Increased Controls included in your request were transmitted separately to the State?

Among the comments, two significant issues of concern to the NRC are the staffing level of the Program and the training and qualifications of the staff. The issues are discussed below and have been discussed by the NRC staff in telephone conversations with you and members of your staff.

First, the evaluation criteria for a new Agreement requires the Program to have an adequate number of trained and fully qualified licensing and inspection staff, before the effective date of the Agreement. Although the request describes the training and qualifications process for the Program staff, it did not appear to provide specific information confirming that an adequate number of trained and qualified licensing and inspection staff would be available in the Program at the time the Agreement is signed. The distribution of licensing and inspection staff qualifications should be reasonably matched to the workload for the categories of licenses to be transferred from NRC before the Agreement is signed.

Second, in your request, the staff-needs analysis indicated that the Program will need approximately 7.2 full-time equivalents to perform licensing activities under the Agreement. *However, in another portion of your request, you stated that you plan to have only four qualified license reviewers, including two managers.* We noted that the four license reviewers will be

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responsible not only for the approximately 511 naturally occurring or accelerator-produced radioactive materials licenses, but also the addition of approximately 492 radioactive materials licenses from NRC. *Based on the discrepancy between your staff-needs analysis and the actual number of staff you plan to use, it appears that you may have overestimated your staffing needs and allocated insufficient staff to assume the regulatory workload on licensing activities to be transferred from NRC. The staff-needs analysis and staffing plan need to be revised to ensure that they are consistent.*

As noted in our discussion on *January 8, 2007*, NRC Region I will stop processing incoming routine licensing actions approximately one month before the effective date of the Agreement. These pending licensing actions will then be transferred to the State for action upon the effective date of the Agreement. Therefore, it is expected that the licensing staff will start with a full workload when the Agreement takes effect. In contrast, NRC Region I is planning to complete all inspections that are due now and out to at least three months beyond the anticipated effective date of the Agreement. This effectively gives the Program a three month buffer period upon assumption of regulatory authority from NRC, regarding routine inspections.

Based on our review of the request, we conclude that the Program may not be adequately staffed to assume the regulatory authority being requested until: (1) the distribution of licensing and inspection staff qualifications is reasonably matched to the workload for the categories of licensees that will be transferred; and (2) the licensing group is fully staffed with individuals qualified according to your training and qualification procedures.

We understand that you have taken actions to address these two significant issues including a plan to increase interactions on licensing and inspections between NRC Region I staff and New Jersey staff in the upcoming months. These interactions should provide your staff with additional knowledge and experience on more complex materials licenses. *The initial meeting to coordinate these activities and discuss other transition issues was held on January 12, 2007, at NRC Region I office. It is my understanding that the meeting was productive, and NRC and New Jersey staffs are working together on these issues.*

The NRC staff notes, as it did during the *January 16, 2007*, conference call with your staff, that any memoranda of understanding (MOU) or protocol agreements that the NRC maintains with the State with respect to nuclear power plants located in New Jersey have no effect on the NRC's review of your Agreement State request or the authority that would be relinquished if the Commission approves Pennsylvania's request. MOUs are governed by Section 274i of the Atomic Energy Act, whereas the NRC's Agreement State Program is controlled by Section 274b of the Act. Likewise, the protocol agreements to observe NRC inspections at nuclear power plants are governed by the Statement of Policy on "Cooperation with States at Commercial Nuclear Power Plants and other Nuclear Production or Utilization Facilities", and not Section 274b of the Act.

Enclosure 3, "Elapsed-Weeks Milestone Schedule," provides a current estimate of the timing associated with anticipated Agreement signing and its effective date. Based on the Milestone Schedule, the comments identified in Enclosure 2 must be resolved, and your commitment to address the staff level and distribution concerns discussed above must be received, by January 9, 2008, in order to meet your target date to become an Agreement State.

D. J. Allard

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If you have any questions about the review, the information needed, or steps involved in processing the Agreement, please contact me at (301) 415-7197, or Ms. Jenny Tobin, Team Leader for the New Jersey Agreement Review Team, at (301) 415-2328. Please note that, over the next few weeks.

Sincerely,

/RA/

Charles L. Miller, Director
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:

1. State of New Jersey Review Team
2. State of New Jersey Formal Request Comments
3. Elapsed-Weeks Milestone Schedule

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Events and Allegation Elements

STATE OF NEW JERSEY

Enclosure 1

ENCLOSURE 1

FORMAL REQUEST COMMENTS

After conducting the detailed review of the Pennsylvania Agreement formal request, dated November 9, 2006, the Review Team has the following comments.

Section 4.1 Legal Elements

4.1.2 Organization of the Proposed Program (Dennis)

1. On page 20, New Jersey does mention one of the MOUs entered into with NRC but does not include the specific language of this legally binding document.

4.1.3 Content of Agreement

1. On page 2, the first paragraph does not include 11.e(3) or 11.e(4) byproduct material in the proposed Agreement for material in which New Jersey will assume authority. This sentence needs to be revised to include the additional material. The information on the bottom of page 3 alternatively includes only 11.e(1) byproduct material. The information needs to be consistent throughout the sample agreement.

4.3 Licensing Program Elements (Bruce,Sandy)

4.3.1 Procedures for the Technical Evaluation of Proposed Uses of Radioactive Material

4.3.5 Procedures for Assuring the Technical Quality of Licenses

4.3.6 Administrative Licensing Procedures

4.4 Inspection Program Elements (Donna)

4.4.1 Procedures for Inspecting Facilities Where Radioactive Materials Are Stored or Used

4.6 Technical Staffing and Training Program Elements (Dennis and Jenny)

4.6.1 Technical Staff Organization

1. The staffing analysis provided in the formal request does not include a program staffing plan showing the number of staff members assigned to specific responsibilities, such as license review and inspection for each major category of licensee. New Jersey would need to provide the information for review.

4.6.3 Qualifications of Current Technical Staff

1. The training records of the New Jersey personnel include a majority of "on the job" training (OJT) without further documentation about what might be included in the training. Further details concerning specific tasks and functions are needed about these activities to ensure the applicability of the OJT to the operations of the program.

2. The documentation for qualifications of the staff did not include courses that staff are scheduled to take but have not been yet completed; each individual needs to include a list of upcoming training in their qualification cards.

4.7 Event and Allegation Response Program Elements (Gary and Joan)

4.7.1 Procedures for Responding to Events and Allegations

4.7.2 Procedures for Identifying Significant Events and Allegations, and for Entering Reports into the Nuclear Material Events Database (NMED)

ELAPSED-WEEKS MILESTONE SCHEDULE*

The following events will not start until the U.S. Nuclear Regulatory Commission (NRC) sends an acknowledgment letter to the New Jersey Program confirming that all the Review Team's comments documented in the *January 26, 2007*, letter have been resolved, and New Jersey's commitment to address the staff level and distribution concerns discussed in that letter has been received.

Event	Event Time (Weeks)	Elapsed Times (Weeks)
Team completes Notation Vote Commission Paper, including draft staff assessment and FR Notice	2	2
NRC offices concur on Commission Paper	3	5
EDO sends Paper to Commission	2	7
Commission gives notation vote	2	9
First publication in FR	1	10
Public comment period ends	4	14
Team analyzes comments; completes final assessment and Commission Paper	4	18
HOLD, IF NECESSARY, PENDING COMPLETION OF STAFF HIRING AND QUALIFICATION BY PENNSYLVANIA	Hold	18 + Hold
NRC offices concur on final assessment and paper	3	21 + Hold
EDO signs paper	2	23 + Hold
Commission SRM approving Agreement	4	27 + Hold
Signing of Agreement	4	31 + Hold
Effective Date of Agreement	To Be Determined	

*** Assumes that all significant issues, including sufficient qualified staff and any public comments, are resolved.**