

Dennis
7/7/09

FOR: The Commissioners
FROM: R. W. Borchardt
Executive Director for Operations
SUBJECT: SECTION 274b AGREEMENT WITH STATE OF NEW JERSEY

PURPOSE:

To request Commission approval of the proposed Agreement with the State of New Jersey. This paper does not address any new commitments.

SUMMARY:

On October 16, 2008, Governor Jon S. Corzine of the State of New Jersey requested that the Commission enter into an Agreement under Section 274b of the Atomic Energy Act of 1954, as amended (the Act). The Commission, through Staff Requirements Memorandum (SRM) dated May 18, 2009, "SECY-09-0065, Proposed Agreement Between the State of New Jersey and the Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended," agreed to publish a notice of the proposed Agreement (Enclosure 1) in the *Federal Register (FR)*. The agency published the notice as required by the Act and requested comments. The public comment period ended on June 26, 2009, and the NRC received [insert number] comment letters.

five

Based on the staff's review of the proposed New Jersey program and analysis of the comments, the staff recommends that the Commission approve the Agreement (Enclosure 1).

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Background:

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In SECY-09-0065, the staff of the U.S. Nuclear Regulatory Commission (NRC) presented a draft of its assessment and discussed the statutory and policy background of the New Jersey Agreement State program. The Commission approved the staff's recommendation to proceed with processing the application for the New Jersey Agreement State program in SRM dated May 18, 2009. As required by Section 274e of the Act, the agency published the proposed Agreement in the *FR* 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 ~~insert page number~~). The comment period ended on June 26, 2009. The NRC made the full text of the staff assessment available through its Agencywide Documents Access and Management System (ADAMS) and Public Electronic Reading Room.

The Agreement will allow New Jersey to assume regulatory authority for byproduct materials as defined in Sections 11e.(1), 11e.(3), and 11e.(4) of the Act; source materials; special nuclear materials not sufficient to form a critical mass, and regulation of land disposal of byproduct material, source material, or special nuclear material waste received from other persons. New Jersey is not seeking authority to (1) conduct safety evaluations of sealed sources and devices manufactured in New Jersey and distributed in interstate commerce, and (2) regulate Section 11e.(2) byproduct material resulting from the extraction or concentration of source material from ore processed primarily for its source material content, and its management and disposal.

DISCUSSION:

(1) Public Comments

The *FR* notice requested comments regarding (1) the proposed Agreement, (2) the NRC staff assessment of the New Jersey Agreement State program, (3) the adequacy of the New Jersey Agreement State program, and (4) the adequacy of the New Jersey Agreement State program staff. The NRC received ~~[insert number]~~ ^{five} comment letters in response to the notice that the Governor of New Jersey has proposed to enter into an Agreement with the Commission under Section 274b of the Act.

The comment letters received [strongly supported the proposed Agreement between the NRC and New Jersey]. [fill in the summary – one support, one comment on license termination, and XX]

In summary, the [comment did not provide any new information that would change the conclusions in the staff assessment of the New Jersey program, and the staff has not changed the assessment in response to the comment.] [update per comments] Enclosure 2 contains the staff analysis of the public comments.

(2) SECY-09-0065

In SECY-09-0065, the NRC staff concluded that, based on the draft assessment, New Jersey satisfied the Commission's policy statement and; therefore, met the requirements of Section 274 of the Act. The staff's final assessment (Enclosure 3) of the New Jersey program reflects the same conclusion that the Commonwealth satisfies the Commission's policy statement and; therefore, meets the requirements of Section 274 of the Act. [update if needed based on public comments]

(3) Transfer of Licenses

state

OK ~~478~~ Gov. Lic.

Currently, the NRC would transfer approximately 500 ~~[check number]~~ NRC licenses, either in whole or in part, to New Jersey's jurisdiction. The NRC staff is continuing to work closely with the New Jersey staff to effect a smooth transition. The staff is coordinating with the New Jersey staff on current and pending licensing, inspection, and enforcement activities involving the licenses to be transferred to ensure the smooth continuation of regulatory actions after the transfer.

(4) Actions Pending against Licensees to be Transferred

[fill in current information for NJ] [this is from VA paper - At the current time, the NRC Office of Investigations has one pending investigation that may result in escalated enforcement actions against an NRC licensee located within the Commonwealth. The NRC Office of Enforcement has one other pending enforcement action against another such licensee. Additionally, no allegations are currently open related to NRC licensees within the Commonwealth. The remaining open actions that the NRC is unable to close between now and the effective date of the Agreement will either continue to be handled by the NRC with the involvement of the Commonwealth or will be transferred to the Commonwealth. The NRC will work closely with the Commonwealth to ensure the smooth transition of authority over these open cases before the effective date of the Agreement.]

(5) Outstanding Orders, Confirmatory Action Letters, and 10 CFR 2.206 Petitions against Licensees that Will Transfer

[check this information] The NRC issued orders and license conditions for Increased Controls (EA-05-090) and Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Materials (EA-07-305) to licensees in the State of New Jersey. **[insert number]** licensees are implementing these requirements based on the quantities of regulated materials that they possess. ~~The NRC staff approved regulations implementing the Increased Controls and Fingerprinting and Criminal History Records Check requirements for risk-significant radioactive materials.~~ **[update this as appropriate - which the Commonwealth will impose on the same licensees under the proposed Agreement.]**

(6) Status of Decommissioning Sites and Method for Providing Information on Previously Licensed Sites

[check this]

The NRC maintains status summaries for all decommissioning sites on NRC's public web site, including those that are considered complex decommissioning sites. The Commission and the public have access to the site summaries through <http://www.nrc.gov/info-finder/decommissioning/complex/>. Currently, there are two sites in New Jersey that are considered complex decommissioning sites - Stepan Chemical Company and Shieldalloy Metallurgical Corporation.

Under the Agreement, regulatory authority for Stepan Chemical Company will remain with NRC. The radioactive material at Stepan Chemical Company's site is Section 11e.(2) byproduct material resulting from the extraction or concentration of source material from ore processed primarily for its source material content, and its management and disposal. New Jersey has not requested this class of materials under its Agreement; therefore, the jurisdiction for this site will remain with NRC.

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Region 1 has incorp IC reqmts by LIC cond. v.c. also to whom applies. transfers

(a source material license)

The regulatory authority for Shieldalloy Metallurgical Corporation will transfer to New Jersey since the radioactive material at Shieldalloy Metallurgical Corporation's site is source material. Since New Jersey has requested the authority to regulate source material under its Agreement, the jurisdiction of this site will transfer to the State of New Jersey. [parallel prior paragraph]

Shieldalloy Metallurgical Corporation has a decommissioning plan under review [check re any info needed related to the actual decommissioning activities ongoing] by the NRC staff. The review schedule ~~is~~ still has significant work to be done prior to approval, that the ^{review} ~~review~~ and the

The Energy Policy Act of 2005 (EPAct) became effective immediately upon signature by the President on August 8, 2005 and authorized the Commission to regulate naturally occurring and accelerator produced radioactive material (NARM) as defined in the amended definition of byproduct material in Section 11e(3) and (4) of the Atomic Energy Act. Many States regulated this material under their existing State radiation programs. The EPAct, in Section 651(e)(5), authorized the Commission to issue a waiver of the requirements in Section 651(e) to any entity with respect to these NARM materials for specified periods of time if the Commission determined that the waiver was in accordance with the protection of the public health and safety and the promotion of the common defense and security. The EPAct limited the waiver to a time period no longer than 4 years. The Commission determined that there was no basis to conclude that the NARM materials would not continue to be used in a manner that is protective of public health and safety while the waiver is in effect. The Commission then granted a waiver (70 FR 51581; August 31, 2005) from the requirements of Section 651(e) of the EPAct. *ongoing source activities will be transferred to the New Jersey for consideration.*

Regulations to address the requirements of the EPAct were effective on November 30, 2007, and are referred to as the "NARM rule." As part of the NARM rule, NRC specifically allowed a transition period for licensees/applicants to submit license amendments or new license applications as needed for NARM. A Transition Plan was noticed in the *Federal Register* on October 19, 2007 (72 FR 59157). The purpose of the Transition Plan is to facilitate an orderly transition of regulatory authority with respect to the NARM materials. The NRC recognized that some States may be interested in becoming an Agreement State based on the passage of the EPAct. Therefore, the staff indicated in the Transition Plan that, "Every effort will be made to complete an Agreement as soon as practical, without compromising quality and completeness... If any Agreements cannot be completed before the waiver expires on August 7, 2009, the Commission may consider, on a case-by-case basis, options to limit the impact on affected users of 11e.(3) and 11e.(4) byproduct material in the States."

The Agreement for New Jersey will not be effective prior to the expiration of the NARM waiver. Staff believes that there will be a minimal impact on New Jersey licensees because of this interim time period of about 7 weeks between the expiration of the NARM waiver and the effective date of the Agreement. NRC will have jurisdictional authority during this time and there will not be a regulatory gap. NRC and New Jersey have discussed this during numerous meetings to ensure a clear understanding of the jurisdiction during this interim time period, and to ensure an efficient transition.

A summary of the NARM waiver expiration and the impact on the New Jersey Agreement is provided in Enclosure 4. Additionally, Paul Baldauf, Assistant Director; Radiation Protection and Release Prevention; provided a letter to NRC confirming his understanding the NARM waiver expiration and the jurisdictional authority by the NRC during this interim time period (Enclosure 5).

[check language]

(8) Effective Date of the Agreement

If the Agreement is signed after September 30, 2009, [initials]

The Governor of New Jersey requested an effective date for the Agreement of no later than September 30, 2009. Commission direction by [fill in date] is critical in order to have the Agreement effective by this date. This is necessary to minimize the interim time period between the NARM waiver expiration and the effective date of the Agreement, as well as to allow adequate time for the signing of the Agreement, the orderly transfer of the files, and the assumption of authority by New Jersey. An effective date of no later than September 30, 2009, will also ensure a cost savings to NRC licensees who will not have to pay 6 months of fees to NRC in addition to the fees that New Jersey will assess. See Enclosure 6 for a high level schedule of the remaining steps for processing the Agreement. [work on language]

IMPLEMENTATION: *avoid additional NRC fees for upon transfer.*

Following execution of the Agreement, the staff will continue to interact with the State of New Jersey. This interaction will consist of the exchange of regulatory information, notices of NRC training courses, and conducting periodic onsite reviews of New Jersey's program for the regulation of Agreement materials. The regulatory information exchange includes reports of incidents, significant enforcement actions, and amendments to policies, regulations, or guidance. Communications are generally more frequent with a new Agreement State during the first few years after the Agreement is signed.

The staff will tentatively schedule an orientation meeting between NRC and New Jersey [insert program name] for 9 months after the effective date of the Agreement to discuss the initial program implementation. The first Integrated Materials Performance Evaluation Program (IMPEP) review of the New Jersey Agreement program will be tentatively scheduled for 18 months after the effective date of the Agreement. Subsequent routine IMPEP reviews will occur at 4-year intervals. The interval may be shortened if performance weaknesses are identified during routine reviews or other interactions with New Jersey.

If approved by the Commission, New Jersey will bring the number of Agreement States to 37.

RESOURCES:

Staff estimates approximately 3 full-time equivalents (FTE) are required in Fiscal Year (FY) 2009 to perform materials licensing, inspection, decommissioning, enforcement, allegation casework and transition activities related to New Jersey. These resources are included in the FY 2009 budget within the Materials Users subprogram (materials licensing and materials inspection planned activities). The Office of Federal and State Materials and Environmental Management Programs anticipates a cost savings due to the transfer of regulatory authority to New Jersey, and has incorporated the resource adjustment in the FY 2010 budget. ~~[have dennis check this]~~

CONCLUSION:

The NRC staff 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 therefore meets the requirements of Section 274 of the Act.

The proposed New Jersey program to regulate Agreement program materials, comprising statutes, regulations, and procedures, is compatible with the Commission's program and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

RECOMMENDATIONS:

That the Commission:

1. Find:

- a. That the proposed New Jersey program for the regulation of byproduct material, source material, special nuclear material in quantities not sufficient to form a critical mass, and regulation of land disposal of byproduct material, source material, or special nuclear material waste received from other persons is compatible with the Commission's program for the regulation of like material; and
- b. That the proposed New Jersey program is adequate to protect public health and safety within the State with respect to the materials and uses covered by the proposed Agreement.

2. Approve:

- a. The proposed Agreement between the State of New Jersey and the NRC pursuant to Section 274 of the Act, as set forth in Enclosure 1.
- b. The proposed Agreement allowing adequate time for the signing of the Agreement, the orderly transfer of license files and the assumption of regulatory authority by the State of New Jersey on September 30, 2009.

3. Note:

- a. *reword* [I think this goes away – need anything related to NARM waiver?] Approval of the proposed Agreement will result in the termination of the Commission-issued waiver (70 FR 51581) on the effective date of the Agreement, March 31, 2009. The Commonwealth of Virginia would then assume regulatory authority over NARM.

- b. *New Jersey* [discuss signing with NJ – formal ceremony or not; revise as needed] The Governor of Virginia ~~is not~~ *does or does not want a formal ceremony* desires to sign the Agreement *in a formal ceremony*. Additional details regarding the formal ceremony will be provided, following approval of the proposed Agreement by the Commission (Enclosure 7).

New Jersey does not desire a formal signing ceremony. Upon approval by the Commission the staff will prepare the final documents and submit them for the Chairman's signature (Enclosure 7).

~~check this language – Andy's email~~ Pursuant to the Act, the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), and Commission guidance, the staff will inform the Speaker of the House of Representatives, the President of the Senate, the New Jersey Congressional delegation and the Director of the Government Accountability Office of the Commission's decision.

The NRC Office of Public Affairs will issue a press release.

- e. The agency will publish the text of the Agreement in the *FR*, as required by Section 274e of the Act, within 30 days after the Agreement is signed (Enclosure 8).

COORDINATION:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objection. The staff has obtained concurrence from the Office of Management and Budget that this action does not constitute a "major rule" under SBREFA.

R. W. Borchard
Executive Director
for Operations

Enclosures:

1. Proposed Agreement between the NRC and New Jersey
2. Staff Analysis of Public Comments
3. NRC Staff Assessment of the New Jersey Program
4. Summary of NARM Waiver expiration
5. Letter from P. Baldauf, NJ
6. Current Milestone Schedule
7. Draft Letter from Chairman Jaczko to Governor Corzine
8. Draft *FR* Notice

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EDATS: FSME-2009-XXXX

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