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TITLE: Fact Sheet ... 274i Agreements With States for Low-Level
Waste Transportation Inspection

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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Bob - added to file
JGP

MEMORANDUM FOR: Multiple Addressees

FROM: James G. Partlow, Director
Division of Inspection Programs, IE

SUBJECT: FACT SHEET ON § 274i AGREEMENTS WITH STATES FOR LOW-LEVEL
WASTE TRANSPORTATION INSPECTIONS

The enclosed fact sheet is intended to clarify the numerous questions which have arisen on this matter. A draft version was circulated to you for comments on December 5, 1985. Based on the comments received, this final version has been developed. We trust that it will be useful and informative to you.

JGP
James G. Partlow, Director
Division of Inspection Programs, IE

Enclosure: Fact Sheet on §274i
Agreements with States for Low-Level
Waste Transportation Inspections

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FACT SHEET ON §274i AGREEMENTS WITH STATES FOR
LOW-LEVEL WASTE TRANSPORTATION INSPECTIONS

Numerous questions have arisen in NRC with regard to the impact of §274i Memoranda of Understanding and/or subagreements thereto. Such agreements provide for states to inspect low-level waste shipments at the waste generator's facility, e.g., at an NRC-licensed facility, typically a power reactor. Many of these questions involve concerns over the impact of such agreements on the current NRC inspection program at such licensed facilities. This fact sheet is intended to clarify those concerns to the extent possible at this point in time.

1. Q. Must a state be an "Agreement State" pursuant to §274b of the Atomic Energy Act in order to enter into a §274i Memorandum of Understanding (MOU) or a subagreement thereunder with NRC?
A. No. A §274i MOU or subagreement can be entered into whether or not the state is an "Agreement State" under §274b.
2. Q. What are the principal differences between an overall §274i MOU and a "subagreement" thereto?
A. The overall MOU is an "umbrella" document which provides general principles of cooperation between a state and NRC in various areas of mutual interest or concern. The subagreements provide a basis for mutually agreeable procedures in specific areas of concern, such as low-level waste (LLW) shipment inspections.
3. Q. What states have entered into "umbrella" MOUs with NRC?
A. To date, such MOUs have been entered into with the States of Indiana, Washington, Oregon, and Illinois. A "Memorandum of Agreement" of more limited scope was also entered into with South Carolina in 1982.
4. Q. Which states have entered into LLW shipment inspection subagreements with NRC?
A. Illinois. Negotiations are underway for similar subagreements with Pennsylvania, Virginia, and Ohio. In addition, a "Subagreement Between the State of Washington and the NRC Related to Use of Third Party Data in Transportation Enforcement Cases" was entered into in 1981.
5. Q. Conceptually, how do those Washington and South Carolina agreements on transportation inspections differ from the Illinois subagreement?
A. The Washington and South Carolina agreements deal only with shipment inspections by those states at the state-licensed burial facility and the use of third party data in enforcement cases, whereas the Illinois subagreement, as well as the generic format for subagreements published by NRC in the Federal Register on 10/26/83 (48 FR 49562), deal with state inspections at the origin site of the waste shipments, e.g., at a licensed facility.

6. Q. Can many more LLW inspection subagreements be expected with other states?

A. Yes. The principal motivation for these subagreements originates from the provisions of the amendments to the Low-Level Radioactive Waste Policy Act of 1980 (PL-99-240). That Act makes each state responsible for providing for the availability of disposal capacity for commercial low-level radioactive wastes generated within its borders, and encourages the formation of regional interstate compacts. In carrying out their responsibilities within these compacts under PL 99-240, some host states feel very strongly a need to have party states inspect individual waste shipments at their point of origin for compliance with regulatory requirements for packaging and transportation. Although not all members of the compact may feel a need for such inspections, we can undoubtedly expect requests from many of them for these §274i subagreements.

7. Q. NRC currently has inspection requirements in its IE program which address inspection of transportation activities in each of three major program areas. In those cases where a §274i subagreement exists, can we anticipate that NRC will no longer carry out its inspections of transportation activities?

A. No. NRC's inspection activities under IE modules 86740, 86721, and 84850 are directed primarily to inspecting a licensee's program and procedures for transportation and low-level waste requirements and these will continue. Individual shipment inspections are normally made only if the opportunity presents itself during an inspection. As stated earlier, if and when the states choose to exercise the authority, activity under a §274i subagreement could be directed toward inspection of each individual shipment for compliance. Further, the NRC inspections address licensees' compliance with both 10 CFR Part 71 (including the DOT requirements of 49 CFR Parts 170-189) and 10 CFR Part 61 requirements, whereas the states currently limit their inspections only to the packaging and shipment requirements relating to transportation.

8. Q. Are any states which have entered into a §274i agreement performing such inspections at the current time?

A. No. Florida, however, has been involved for about three years with the inspection of each shipment of low-level waste originating in Florida, at point of origin, prior to transport to a commercial low-level waste site. These activities are not, carried out under the authority of Florida's §274b Agreement or any §274i MOU or subagreements. As a result of a Florida State law, passed in 1981, each waste generator that ships low-level waste to a commercial burial site must notify the Florida Office of Radiation Control prior to the shipment. An inspector from the State will then go to the generator's facility and inspect the shipment, signing off on the shipment upon completion of the inspection.

9. Q. It would appear, therefore, that as of January 1986, only Illinois has accomplished a §274i waste shipment inspection "subagreement", but as yet, has not begun performing inspections of shipments at NRC licensed facilities? When will they begin?
- A. It is anticipated that Illinois will probably begin such inspections in 1986.
10. Q. What actions and by whom will enforcement be taken subsequent to violations noted in the state inspections under a §274i subagreement?
- A. The state will notify both the NRC and the licensee in writing of violations or discrepancies. The licensee must then notify the state and NRC of corrective actions taken or planned. Any enforcement action will be taken by NRC, not the state, although the state would not be precluded from also taking action under its own laws. It should be recognized, however, that a shipment discrepancy found by a state at the point of origin of the licensee would not be in violation until the shipment actually enters into transportation. We would assume that, in such cases, the state would not allow such shipment to leave the licensee's control, knowing such a shipment would be in violation, and we would further assume that the state would not cite a violation for what has, in effect, not occurred or could have occurred. After NRC has been notified of such cases, the circumstances would be examined, and if appropriate, enforcement action might be initiated on possible violations of requirements of either the license technical specifications or quality control.
11. Q. Does NRC evaluate the states' ability to perform these inspections?
- A. No. There are no evaluations as are done in the case of §274b Agreement State programs. However, under the terms of the subagreements, the state agrees to utilize personnel knowledgeable in radiation safety, low-level waste packaging, and transportation regulations.
12. Q. Does the NRC reimburse the state for performing these inspections?
- A. No. Such functions are performed by a state without cost or expense to NRC, except for the cost of any training NRC finds it appropriate to provide to the state.
13. Q. Since it is specified in the subagreements that the state will utilize inspectors who are knowledgeable in, among other things, "low-level waste packaging," can we assume that the inspections by the state will include 10 CFR Part 61 aspects such as the waste form, characterization, labeling, and stability requirements?

- A. We have been advised by OSP that it was not intended that the state inspections would involve 10 CFR Part 61 requirements. If the state wishes to pursue inspection activities at NRC-licensed sites pertaining to compliance with 10 CFR Part 61 that would go beyond the mere examination of documentation dealing with adherence of waste generators to the provisions of these sections, the subject of such intensified inspections should be discussed with Headquarters. NRC agreement that a state might undertake such inspections would come only after NRC is assured that the state has the appropriate level of expertise to apply to such inspections and that such inspections will not compromise public health and safety. Appropriate amendments to the MOU would be necessary.