

From: [White, Duncan](#)
To: [Poy, Stephen](#)
Cc: [Sollenberger, Dennis](#); [Katanic, Janine](#)
Subject: FW: State Compliance with 42 USC § 2021(o)(3)(A)
Date: Wednesday, December 05, 2012 5:29:33 PM

Stephen:

Please be sure that that these get into ADAMS.

Thanks,
Duncan

From: White, Duncan
Sent: Wednesday, December 05, 2012 5:25 PM
To: 'Sarah Fields'
Cc: Poy, Stephen; Sollenberger, Dennis; Katanic, Janine
Subject: RE: State Compliance with 42 USC § 2021(o)(3)(A)

Ms. Fields:

This is in response to your email below in which you emphasized the term “under State law” as included in sections of the Atomic Energy Act, as amended (AEA), specifically 42 USC §2021o.(3)(A).

One of the basic tenants of the Agreement State program which is presented in 42 USC §2012a. is that the NRC can establish procedures and criteria so that the NRC can discontinue, and the State assume, regulatory authority over byproduct, source and special nuclear materials. The NRC guidance document SA-700 “Processing an Agreement” describes this procedure and criteria for the State to enter into an agreement and assume regulatory authority over the specified AEA materials. This guidance document states that the State enabling legislation should provide specific elements of authority to the organization implementing the State Agreement materials program. As specified in SA-700, this legislation should include authorization to promulgate regulations to implement the State’s program. Therefore, the State does not need specific statutory provisions to implement the procedures required under 42 U.S.C §2021o.(3)(A) but can promulgate regulations to meet this AEA requirement. The State regulations implementing these procedures are considered “under State law” for purposes of meeting this Agreement State legal criteria requirement.

If you have any questions on this response, please feel free to contact me.

Duncan White

From: Sarah Fields [<mailto:sarah@uraniumwatch.org>]
Sent: Wednesday, September 19, 2012 3:15 PM
To: White, Duncan
Subject: State Compliance with 42 USC § 2021(o)(3)(A)

Dear Mr. White,

It just came to my attention that the Atomic Energy Act requires that the Agreement State Section 2021(o)(3)(A) procedures for hearings are supposed to be under "State law."

That means that Colorado (and Utah) must pass a "law," not just do a rulemaking if they are to be in compliance with 42 USC §2021(o)(3)(A).

42 USC §2021(o)(3)(A):

(3) procedures which--

(A) in the case of licenses, provide procedures **under State law** which include-

(i) an opportunity, after public notice, for written comments and a public hearing, with a transcript,

(ii) an opportunity for cross examination, and

(iii) a written determination which is based upon

findings included in such determination and upon the evidence presented during the public

comment period and which is subject to judicial review;

For the environmental analysis requirements at (3)(C), the Atomic Energy Act does not specifically state

whether it must be a law or just a regulation.

Sarah Fields
Program Director
Uranium Watch
PO Box 344
Moab, Utah 84532