

POLICY ISSUE
(Notation Vote)

July 5, 2016

SECY-16-0084

FOR: The Commissioners

FROM: Victor M. McCree
Executive Director for Operations

SUBJECT: WYOMING'S PROPOSAL FOR A LIMITED AGREEMENT TO ONLY
REGULATE MILLING FACILITIES' SOURCE MATERIAL AND 11E.(2)
BYPRODUCT MATERIAL

PURPOSE:

The purpose of this paper is two-fold:

- 1) To obtain Commission approval on Wyoming's proposed approach to enter into a limited Agreement pursuant to Section 274b. of the Atomic Energy Act of 1954, as amended (AEA). The proposed approach is an Agreement which would only authorize Wyoming to assume regulatory authority over uranium and thorium milling (e.g., conventional and in-situ uranium recovery (ISR) activities). As a result, Wyoming would only assume regulatory authority over the possession and use of source material involved in the extraction and concentration of uranium and thorium in source material and ores at milling facilities, and the management and disposal of byproduct material as defined in Section 11e.(2) of the AEA. Such a proposal involves creating a subcategory of source material. The U.S. Nuclear Regulatory Commission (NRC) would continue regulatory authority over the remaining source material, other categories of byproduct material, and all special nuclear material in Wyoming.
- 2) To obtain Commission approval on the proposed Agreement language that describes Wyoming and NRC authorities and responsibilities. Approval on the proposed

CONTACT: Stephen Poy, NMSS/MSTR
(301) 415-7135

Agreement language is necessary so that the State of Wyoming can properly amend its enabling legislation to have authority over a subcategory of source material and 11e.(2) byproduct material.

SUMMARY:

The limited Agreement would allow Wyoming to assume, and the NRC to discontinue, regulatory authority over the subcategory of source material involved in the extraction and concentration of uranium and thorium milling and the management and disposal of byproduct material as defined in 11e.(2) of the AEA. As a result, Wyoming would be the sole regulatory authority over milling facilities and 11e.(2) disposal sites in the State. The Commission has entered into limited Agreements with States in the past, and Wyoming's proposed approach is consistent with past Commission practice. From a policy perspective, the proposal creates an orderly pattern of regulation in Wyoming. As such, the staff recommends Commission approval of Wyoming's proposed approach for a limited agreement and the proposed Agreement language contained in the enclosure.

BACKGROUND:

The NRC staff has been working with the State of Wyoming since the fall of 2014 when the State began developing legislation to give its governor authority to enter into an Agreement with the NRC. That legislation was approved by Wyoming on February 23, 2015. Four days later, in a February 27, 2015, letter to Chairman Burns, Governor Matthew Mead of Wyoming stated that Wyoming intends to pursue an Agreement with the NRC "to regulate source material and byproduct material (as defined in 11e.(2) of the Act)" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15062A637). In November 2015, Wyoming's Department of Environmental Quality informed the NRC staff that they plan to submit an Agreement application in late 2017, requesting authority to only regulate 11e.(2) byproduct and source material involved in uranium and thorium milling. Currently, staff continues to work with Wyoming as they develop their Agreement application.

While the Commission has entered into limited Agreements with States in the past, Wyoming's proposal is the first time the NRC will consider a State's request to obtain an Agreement to only regulate uranium and thorium milling facilities and 11e.(2) byproduct material. Such an Agreement would require defining a subcategory of source material for the Agreement. The AEA defines 11e.(2) byproduct material as "the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material

content,” which is a separate or subcategory of byproduct material in Section 11e.¹ In comparison, Section 11z. defines source material as: “(1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 61 to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.” The definition does not specifically mention a separate category of source material involved with milling activities.

Although the Commission has addressed subcategories of source material with regard to the Oklahoma Agreement and limited Agreements in the past, the Wyoming proposal is the first to enter into an Agreement to only obtain regulatory authority over milling facilities. In 2000, the Commission agreed with the creation of a subcategory of source material when approving the Oklahoma Agreement. In that situation, Oklahoma only assumed regulatory authority “over source material used to take advantage of the density and high-mass property where the use of the specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material” (depleted uranium).

Based on prior Commission direction, the staff is seeking the Commission’s approval of Wyoming’s proposed approach to enter into a limited agreement to regulate a subcategory of source material involved with milling activities instead of the entire category of source material as described in Section 11z. of the AEA. Given Wyoming’s forthcoming Limited Agreement application (fall of 2017) and the need for Commission direction on this matter, it is appropriate at this stage in the process to request Commission approval on Wyoming’s proposed approach.

Additionally, it will be necessary for Wyoming to amend its enabling legislation to have authority over a subcategory of source material and 11e.(2) byproduct material. The language in the amended legislation will need to align with the language in the proposed Agreement. The Wyoming Legislature meets for not more than 40 days in odd-numbered years in General Session. Wyoming’s 2017 General Session is currently scheduled to convene on January 10, 2017. As such, it is timely at this point in the process to request Commission approval on the portions of the proposed Agreement language that focus on the regulatory areas where Wyoming shall assume authority and responsibility and where the Commission shall retain authority and responsibility. Commission approval will allow Wyoming to properly amend its enabling legislation to have authority over a subcategory of source material and 11e.(2) byproduct material.

¹ Section 11e. of the AEA states: [T]he term “byproduct material” means – (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; (3)(A) any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or (B) any material that- (i) has been made radioactive by use of a particle accelerator; and (ii) is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph for use for a commercial, medical, or research activity; and (4) any discrete source of naturally occurring radioactive material, other than source material that – (A) the Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and (B) before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

DISCUSSION:

Provided below is a review of the Oklahoma Agreement and associated subcategory approach, a description of Wyoming's proposed approach for a limited Agreement including an analysis of Wyoming's proposal using the criteria from the Oklahoma Agreement Commission paper as the template for discussing Wyoming's proposed approach for a limited Agreement, and a brief discussion of outstanding issues related to the Wyoming's future Agreement State application.

The Oklahoma Agreement and the Subcategory Approach

In 1995, the State of Oklahoma originally filed a draft application for a full Section 274b. Agreement requesting regulatory authority over source, byproduct and special nuclear material under critical mass, but requested the exclusion of five major facilities undergoing decommissioning. Prior to this, no full AEA Section 274b. Agreement containing facility exclusions had ever been approved.² The NRC staff recommended that the Commission deny Oklahoma's application while providing a general approach for handling requests for limited 274b. Agreements. As stated in SECY-97-087, "Oklahoma Agreement State Negotiations: State Requests that Major Facilities Undergoing Site Decommissioning not be Relinquished to State" (ADAMS Accession No. ML992930004):

"Overall, the staff would consider whether the proposed Agreement would jeopardize '...an orderly regulatory pattern between the Commission and the State governments...' as indicated by Section 274a.(3) of the AEA. In particular, requests for limited Agreements would have to identify discrete categories of material or classes of licensed activity that (1) can be reserved to NRC authority without undue confusion to the regulated community or burden to NRC resources, and (2) can be applied logically, and consistently to existing and future licensees over time. Under this approach, NRC would not reserve authority over a single license unless that licensee clearly constituted a single class of activity or category of material meeting the two criteria described above."

In SRM-SECY-97-087 (ADAMS Accession No. ML003752408), the Commission agreed with the staff's recommendation to deny the Oklahoma request. The Commission also agreed with the staff's general approach for handling requests for limited agreements. The Commission directed that the NRC staff "should consult with the Commission prior to the formulation of final Agreements in instances where there was not a clear precedent for the action."

Subsequently, in SECY-99-123, "Oklahoma Agreement State Negotiations: State Proposal to Limit Scope of Agreement" (ADAMS Accession No. ML003752047), the NRC staff provided an analysis of the Oklahoma request for a limited agreement based on the SECY-97-087 criteria to justify creation of a subcategory of material or class of licensed activity that could be transferred to State authority without undue confusion to the licensed community and be applied logically and consistently to present and future regulatory actions. In 2000, the Commission approved an Agreement with the State of Oklahoma that included a "subcategory" of source material. The State assumed authority for:

² The NRC retained regulatory authority over the Allied Chemical facility when the Illinois 274b. Agreement was signed because of common defense and security considerations.

- (1) 11e.(1) byproduct material,
- (2) Special nuclear material less than critical mass quantities; and
- (3) Source material used to take advantage of its density and high mass properties where the use of specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material.

The NRC retained regulatory authority over all other source material in the State, which included the five source material sites undergoing decommissioning that the State previously proposed to explicitly exclude from the 274b. Agreement.

Wyoming's Proposal for a Limited Agreement

The State of Wyoming's proposed approach is for an Agreement limited to assuming regulatory authority over uranium or thorium milling facilities that involve the extraction or concentration of uranium or thorium from any source material or ore processed primarily for its source material content at heap leach, conventional mills, and ISR facilities (i.e., an Agreement for a subcategory of source material). These facilities process source material such as: (1) unrefined and unprocessed ore, that is in its natural form prior to any processing; (2) approved alternative feed; or (3) equivalent feed material. The uranium milling facilities produce a commercial source material product (i.e., yellowcake) which is subsequently shipped to a uranium conversion facility. Thorium milling facilities also produce a commercial source material, thorium dioxide. However, thorium dioxide does not need to be shipped to a conversion facility for enrichment. Thorium dioxide can be sent directly to a fuel fabrication facility to be used in the manufacturing of fuel.

Waste products of the uranium and thorium processes often include mill tailings or other associated process waste (i.e., 11e.(2) byproduct material) that remain at the site, are shipped off-site to be used as a feed at another facility, or are sent to a facility for disposal. As discussed above, Wyoming's proposal is to enter into a limited agreement to regulate a subcategory of source material, and 11.e(2) byproduct material, involved with milling activities. As a result, the Agreement would relinquish NRC's authority over the processing of source material or ores, the resulting yellowcake and thorium dioxide, and the management and disposal of the 11e.(2) "the tailings or wastes" produced by these activities.

Currently, there are 15 uranium mill sites (active, decommissioning, and standby), 1 laboratory, 1 nuclear pharmacy, and 11 industrial radiography licensees that are authorized to possess source material in the State of Wyoming. There are no thorium milling facilities in Wyoming.

Analysis of Wyoming's Proposal

The following analysis of Wyoming's proposed approach uses the criteria from the Oklahoma Agreement Commission paper to evaluate limited Agreements.

- (1) Promotes an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear material.

In 1978 Congress enacted the Uranium Mill Tailings Radiation Control Act (UMTRCA), which also amended the AEA definition of byproduct material by adding 11e.(2), "the tailings or wastes

produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.” UMTRCA also made conforming changes to the AEA by adding Section 274o. and 275. As a result of these legislative changes, the Commission revised its policy statement regarding “Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption of Regulatory Authority by States through Agreement” (46 FR 7540, January 23, 1981; as amended by policy statements published at 46 FR 36969, July 16, 1981; and 48 FR 33376, July 21, 1983). Revisions to the policy statement (criteria 29 through 36) allowed States that meet the criteria for the regulation of uranium mills and tailings under UMTRCA and Section 274o. of the Act to obtain regulatory authority over 11e.(2) byproduct materials.

Thus, subsequent to 1978, Article 1 in all 274b. Agreement documents specified byproduct materials 11e.(1) and/or 11e.(2) as areas for which the State would assume regulatory responsibility under the Agreement. In addition, States which had entered into an Agreement prior to 1978 had to amend their Agreements to specifically include 11e.(2) byproduct materials to retain regulatory authority over milling and 11e.(2) management and disposal.³ In the early 1980s, three States (Colorado, Texas and Washington) amended their Agreements to add 11e.(2) byproduct material and adopted the UMTRCA and Section 274o. requirements. New Mexico was the only Agreement State that did not request an amendment to retain regulatory authority over their existing milling and 11e.(2) byproduct material licensees.

In 1986, the Governor of New Mexico wrote a letter to the NRC stating that the State would transfer the uranium program from the State to the NRC due to severe budget constraints. Until this time, New Mexico had been working to amend their 1974 Agreement to cover uranium mill tailings after the NRC informed New Mexico that the State regulations failed to meet applicable federal statutory and regulatory requirements. The Governor’s letter also noted that three of the five active site licensees had informed the State they disputed the legal power of the State to enforce EPA’s general standards applying to milling facilities and 11e.(2) byproduct material. The licensees said they did not intend to comply with these federal requirements unless they were incorporated into State law through a formal rulemaking.

After considering the information in the Governor’s letter, the Commission issued an Order (CLI-86-10) to “terminate the appropriate portion of the New Mexico’s 274b. Agreement ... dealing with uranium and thorium milling and mill tailings.” The Commission Order stated that the termination was in the interest of public health and safety and transferred all of New Mexico’s issued licenses, license amendments, outstanding orders, or other documents establishing obligations for specific licensees to the NRC. The Order also noted that New Mexico would continue licensing and regulating source material for other uses and that the 1974 Agreement did not need to be amended because it did not specifically list 11e.(2) as a category of byproduct material. Upon the Order, the NRC assumed authority over the subcategory of source material involved in the extraction and concentration of uranium and thorium and the management and disposal of byproduct material as defined in 11e.(2) of the AEA.

The NRC’s separate evaluation of a State’s uranium recovery program during the Integrated

³ Specific regulatory activities explicitly listed in Agreements include the regulation of Low-Level Waste Disposal, ISRs and the Sealed Sources and Devices (SS&D) programs. The State assumes regulatory authority over specific categories of byproduct, source, and special nuclear material in the Agreement and also lists specific regulatory programs. If the State does not assume regulatory authority over a program, the NRC retains regulatory authority over the program and related radioactive materials in the State.

Materials Performance Evaluation Program (IMPEP) reviews is consistent with Wyoming's proposal. In 2004, the NRC developed specific guidance (SA-110, "Reviewing the Non-Common Performance Indicator, Uranium Recovery Program") for IMPEP review teams.⁴ SA-110 is used in conjunction with Management Directive 5.6 "Integrated Materials Performance Evaluation Program" to support reviews of uranium recovery programs within Agreement States. The staff would apply these procedures when conducting an IMPEP review of the Wyoming Uranium Recovery program.

The Wyoming proposal also avoids the potential for two AEA-related regulatory agencies to regulate the same licensee for the same activity. If Wyoming assumed regulatory authority over the entire category of source material, and just the 11e.(2) byproduct material, it would create a complicated regulatory structure for certain laboratories, nuclear pharmacies, and industrial radiographers since their licenses authorize the possession and use of source material and 11e.(1) byproduct material. For example, if Wyoming assumed authority over all source material and just 11e.(2) byproduct material, industrial radiography licensees that require depleted uranium shielding in the exposure device would be regulated by both Wyoming (depleted uranium as a source material) and the NRC (11e.(1) byproduct material). Wyoming's proposal of a limited Agreement for a subcategory of source material and 11e.(2) byproduct material does not result in a complicated regulatory structure and as such, would promote an orderly pattern and minimize confusion among the State licensees who would otherwise be subject to regulation by both the State and NRC.

- (2) The proposal identifies discrete categories of material or classes of licensed activity that can be reserved to NRC authority without undue confusion to the regulated community or burden to NRC resources.

The Wyoming proposal delineates a clear subcategory of source material that would be regulated by the State and the remaining source material regulated by the NRC. Wyoming would only license the possession and use of source material involved in the extraction and concentration of uranium and thorium in source material and ores, and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act. This delineates a clear class of licensed activities involved with milling and 11e.(2) management and disposal. The NRC would retain regulatory authority over the remaining source material, 11e.(1), (3) and (4) byproduct material and any licenses for special nuclear material. Tying the definition of the subcategory of source material to its involvement in the milling process creates an easy to understand subcategory of source material for the regulated community and clearly delineates who has regulatory authority over milling activities and 11e.(2) management and disposal in the State. Therefore, the implementation of the limited agreement should not create confusion for the regulated community or be a burden on NRC resources.

- (3) The proposal can be applied logically, and consistently to existing and future licensees over time.

⁴ SA-110 applies only to review of the uranium recovery program activities common to the NRC and Agreement States, including 11e.(2) byproduct and source material inspections and licensing activities related to yellowcake production and the construction, operation, and decommission of these facilities. Other procedures apply when evaluating other performance indicators, such as compatibility of the regulatory requirements.

As discussed above, Wyoming's proposal presents a clear, narrowly defined subcategory of material that can be applied logically and consistently to existing and future licensees over time who hold a primary specific material license for source or 11e.(2) byproduct material involved in uranium or thorium milling.

(4) Resource and Policy Considerations.

The staff has also examined the resource and policy impacts of the Wyoming proposal. The staff finds that from a resource perspective, the Wyoming request would not cause a burden on the NRC resources.

Wyoming's proposal would transfer the 8 uranium milling (ISR) sites (4 operating facilities, 1 facility in standby, and 3 applications for new facilities) and 7 sites currently undergoing decommissioning to the State. Depending on where each site is in the decommissioning process at the time of the Agreement, the site will be transferred to Wyoming or will be under the Department of Energy responsibility for long term care. The transfer of all affected licenses to Wyoming would occur upon the effective date of the Agreement.

The NRC currently regulates 117 active material licensees in the State or Wyoming. Of the 117 material licensees, 12 are active 11e. (2) byproduct and source material licensees involved in uranium milling. These licenses would transfer to the State of Wyoming. Of the remaining active licenses, 103 are 11e.(1), (3), or (4) byproduct material licensees, 13 are source material licensees not involved with milling activities, and 1 is a special nuclear material licensee. These licenses would remain with the NRC.

The workload (resource) savings to the NRC if Wyoming assumed authority for the source and 11e.(2) byproduct material licensees can be found in Enclosure 2 of SECY-16-0035, "Additional Re-Baselining Products" (ADAMS Accession No. ML16077A190). These workload savings are estimated to be 16 full-time equivalent (FTE) units.

Proposed Agreement Language

Consistent with the limited Agreement approach discussed and analyzed above, staff has developed proposed language for sections of the Wyoming Agreement (Enclosure).

Specifically, the proposed Agreement language describes the regulatory areas where Wyoming shall assume authority and responsibility, the regulatory areas where the Commission shall retain authority and responsibility including certain authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act, and other provisions including financial surety arrangements for reclamation or long-term surveillance and maintenance of 11e.(2) byproduct material.

Outstanding Issues

There are some outstanding issues that are unique to Wyoming's upcoming Agreement State application that will need future consideration. In particular, there are concerns that a Wyoming trespass law could prevent the State's radiation control program from doing timely inspections and responding to information received from the general public. The law also could inhibit individuals from reporting allegations or even reporting the discovery of abandoned devices containing radioactive material to the State and the NRC. The NRC staff is currently working

with Wyoming staff to resolve the concern regarding the trespass law and evaluate the State's proposed legislation and regulations. Standard legislative and regulatory provisions have to be evaluated and then customized to support Wyoming's proposal for a limited agreement. Currently, several ISR licensees have programmatic agreements or memorandum of agreements that were used to resolve National Historic Preservation Acts issues during their licensing. Staff has yet to evaluate the status of these programmatic agreements and memorandum of agreements upon transfer to the State or stakeholder reaction to the final standing of these agreements. Staff anticipates there will be considerable interest in Wyoming's Agreement State application from Native American Tribes in the region. The staff will also need to coordinate transfer of licensing actions in hearings and sites undergoing decommissioning upon signature of the Agreement.

CONCLUSIONS:

Based on the above analysis, the staff concludes that Wyoming's proposed approach for a limited Agreement meets the criteria in SECY-97-087. The proposal identifies a clear subcategory of material or class of licensed activity that could be transferred to State authority without undue confusion to the regulated community, and could be applied logically and consistently. The staff also concludes that although the proposal results in NRC retention of source and byproduct material licenses that are usually transferred to a State under a full agreement, Wyoming's proposal is not prohibited by the AEA and is consistent with the criteria set out in SECY-97-087.

Wyoming's proposal would lead to an Agreement such that the Commission will discontinue regulatory authority, and allow the State to assume regulatory authority, over uranium and thorium milling activities and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act. The State of Wyoming in their October 20, 2015, letter to the NRC also supports this approach for a limited Agreement (ADAMS Accession No. ML15295A065).

RESOURCE IMPLICATIONS:

Staff has determined that the creation of a subcategory of source material that is only involved with milling activities would not cause a burden on the NRC resources since it allows the State to enter into an Agreement to assume sole regulatory authority for licensing milling activities and regulation of 11e.(2) byproduct material in the State.

RECOMMENDATION:

That the Commission approve Wyoming's proposed approach for a limited Agreement to only assume regulatory authority over a subcategory of source material involved with milling activities; and the category of 11e.(2) material. Similarly, that the Commission approve the proposed Agreement language (Enclosure) that specifies the regulatory areas where Wyoming shall assume authority and responsibility, where the Commission shall retain authority and responsibility, and other provisions including financial surety arrangements for reclamation or long-term surveillance and maintenance of 11e.(2) byproduct material.

The Commissioners

10

COORDINATION:

The Office of the General Counsel has no legal objections with the staff's recommended approach.

/RA Michael R. Johnson Acting for/

Victor M. McCree
Executive Director
for Operations

Enclosure:
Proposed Agreement Language to
Describe Wyoming and NRC Authorities
and Responsibilities

COORDINATION:

The Office of the General Counsel has no legal objections with the staff's recommended approach.

/RA Michael R. Johnson Acting for/

Victor M. McCree
Executive Director
for Operations

Enclosure:
Proposed Agreement Language to
Describe Wyoming and NRC Authorities
and Responsibilities

DISTRIBUTION:
MSTR r/f
RidsEdoMailCenter Resource

ML16089A241

OFC	MSTR	MSTR	OGC	MSTR	TechEd	NMSS	EDO
NAME	SPoy	PMichalak	MSpencer	DCollins	WMoore	JMunday for SMOore	VMcCree
DATE	4/1/16	4/14/16	5/23/16	6/13/16	6/14/16	6/22/16	7/05/16

OFFICIAL RECORD COPY

Proposed Agreement Language to Describe Wyoming and NRC Authorities and Responsibilities

Wyoming shall assume authority and responsibility over the following materials:

- A. Byproduct material as defined in Section 11e.(2) of the Act;
- B. Source material involved in the extraction and concentration of uranium and thorium in source material and ores at uranium and thorium milling facilities.

The Commission shall retain authority and responsibility with respect to regulation of:

- A. Byproduct material as defined in section 11e.(1) of the Act;
- B. Byproduct material as defined in section 11e.(3) of the Act;
- C. Byproduct material as defined in section 11e.(4) of the Act;
- D. Source material except for source material involved in uranium and thorium milling;
- E. Special nuclear materials,
- F. The regulation of the land disposal of the byproduct material that is retained by the Commission (i.e., 11e.(1), 11e.(3), and 11e.(4) of the Act), source, or special nuclear waste material received from other persons;
- G. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
- H. 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;
- I. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste material as defined in the regulations or orders of the Commission;
- J. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;
- K. 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;

The Commission shall also retain the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

- A. Prior to the termination of a State license for such byproduct material, or for any activity that resulted in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met;
- B. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

- 1. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the

Enclosure

licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

2. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State of Wyoming at the option of the State (provided such option is exercised prior to termination of the license);

3. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to 2.b. in this Section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

4. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this Section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;

5. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and

6. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.”

Other provisions would include:

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in the production of such byproduct material, the State shall comply with the provisions of Section 274o. of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such byproduct material:

- A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such byproduct material and its disposal site is transferred to the United States upon termination of the State license for such byproduct material or any activity that results in the production of such byproduct material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance.

Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

- B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.”