



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 17, 2016

Mr. Kyle Wendtland, Administrator
Wyoming Department of Environmental Quality
Land Quality Division
200 W. 17th Street
Cheyenne, WY 82002

Dear Mr. Wendtland:

The U.S. Nuclear Regulatory Commission staff (NRC) has reviewed Wyoming's June 8, 2016, response to our comments in our December 8, 2015, letter, and in our April 29, 2016, e-mail concerning the new Civil Trespass to Collect Data law, Wyoming Enrolled Act No. 61 (Data Collection Trespass Law). The NRC staff reviewed Session Laws of Wyoming, 2015, Chapter 146, Trespassing to Collect Data and Chapter 183, Trespassing to Collect Data – Civil Cause of Action and Chapter. The NRC staff raised issues related to this law when they reviewed the enabling legislation contained in Wyoming House Bill HB0027, received by NRC staff on August 13, 2015. We are addressing comments in the enabling legislation unrelated to the Trespass Law in another letter.

We appreciate the opportunity to respond to your letter. Your responses to items 1, 2, and 4 in your June 8, 2016, letter regarding our December 8, 2015, letter and your responses to items 1 and 2 in your June 8, 2016, letter regarding our April 29, 2016, e-mail address our concerns on those provisions. We have one additional concern that can be addressed by the Wyoming Department of Environmental Quality (DEQ):

Please confirm that the State will provide procedures in its Agreement application that address follow-up and closeout of any allegations that the State of Wyoming receives related to the regulation of Agreement material.

We note that in your June 8, 2016, response to item 3 of the NRC's December 8, 2015, letter, Wyoming stated these procedures are being developed. The procedures must provide for the protection of the person's identity when requested and must provide for the protection of other sensitive information. The State procedures should also describe how this information will be retained and made available to NRC during reviews of the State program.

The NRC staff continues to have the following concerns that need be addressed by the Wyoming Office of the Attorney General related to the Data Collection Trespass Law.

1. On page 3 of the Data Collection Trespass Law, lines 5 through 18 state that trespassing to unlawfully collect resource data and unlawfully collecting resource data is punishable by imprisonment, fine, or both. In your response to item 5 in the June 8, 2016 letter, you indicate that individuals are not punished for developing and reporting information but for the act of trespassing. Please confirm that a member of the public will not be prosecuted for collecting, developing or reporting information of potential safety concerns involving radioactive material.

2. Page 5 of the Data Collection Trespass Law, paragraph (e) lines 7 through 13 of the Data Collection Trespass Law states: "No resource data collected in violation of this section is admissible in evidence in any civil, criminal or administrative proceeding, other than a prosecution for violation of this section or a civil action against the violator." This section applies whether or not the violation was prosecuted or resulted in conviction of this law.

In your June 8, 2016, response to item 6 of our December 8, 2015, letter and during subsequent discussions with your staff, you indicated that information collected that relates to Agreement State activities can be used by the State regardless if the individual is prosecuted or convicted under the Data Collection Trespass Law. Please confirm that if a member of the public is prosecuted or convicted under the Data Collection Trespass Law, the information collected that relates to Agreement State activities can still be used by the State to investigate allegations, violations, and take action to protect public health and safety. Please also clarify whether the Wyoming Agreement Program's response will change if the individual had knowingly trespassed on the private property. Will the Attorney General's Office support DEQ in taking action to protect public health and safety or an enforcement action if the information is provided by a potential violator of the Date Collection Trespass Law? Will DEQ forward relevant information to the NRC?

3. Page 5 of the Data Collection Trespass Law, lines 15 through 19 state "that resource data collected in violation of this section in possession of any governmental entity shall be expunged by the entity from all files and data bases, and it shall not be considered in determining agency action." This section of the Data Collection Trespass Law also discusses the expungement of information from the files and databases, and not having the information be considered in determining agency action.

In your June 8, 2016, response to item 7 of our December 8, 2015, letter, you indicate that this will not prevent the use of information in State regulatory actions given the distinction between collection of information and trespassing made in your previous two responses (items 5 and 6 of the June 8, 2016 letter). However your June 8, 2016, response is not complete since it appears, based on this section of the Data Collection Trespass Law, that the State will not be able to: 1) investigate or act on an allegation; 2) send information to the NRC if it involves NRC regulated materials or common defense and security concerns; or 3) have a record for NRC to evaluate during a Integrated Materials Performance Evaluation Program review. Please provide additional information describing how the State will not be impeded in implementing the aforementioned actions. This response should explain how the State can use the information and when the State has to expunge this information. For example, will the State be able to use the information before the person that reported the information is convicted under the Data Collection Trespass Law to support a warrant or investigation? What will happen if the person is convicted? Does the Court have to order the information to be expunged from all files and databases after a conviction or is the information automatically expunged? Can the State expunge information before a conviction?

4. In your June 8, 2016, response to item 8 of our December 8, 2015, letter, your response to item 8 clarified the meaning of specified terms, however, the response only provided definitions in accordance with the Webster's Dictionary and in particular did not explain what was considered data that will be covered under the law. The Wyoming Attorney

General's Office, in providing definitions of these terms should also clarify the scope of the information covered by the term "resource data" (e.g. does the term resource data cover photographs or observations from private or public lands on to private property.) What other types of information does it cover, or not cover? Please also provide additional information to the definition to the terms we identified in our letter dated December 8, 2015, to help us evaluate the potential effect of the Data Collection Trespass Law will have on Wyoming's Agreement State program application.

5. In a previous response to question 3 of the NRC's email dated April 29, 2016, the State indicated that the collected resource data is not admissible evidence, only if the concerned individual is convicted under this Law. Does that mean the information can be used as evidence if the individual is not convicted under the statute? Can the State act on the information prior to a conviction?
6. In response to NRC's email question 4 dated April 29, 2016, the State stated it will investigate "legitimate" allegations or violations. Will the State consider information obtained by a person knowingly or unknowingly trespassing to be a "legitimate allegation?" Can information from a person knowingly or unknowingly trespassing on private property be used to obtain a warrant for an investigation or support issuance of an emergency order involving Agreement material? Will information relating to an NRC licensee or common defense and security matter be passed on to the NRC?

With respect to your question for the NRC in your June 8, 2016, letter, "Does Wyoming Department of Environmental Quality have unfettered access to information with regard to ensuring public health and safety relating to regulation of the radioactive material within its jurisdiction," and your request for clarification of the terms, "unfettered access" and "information," the NRC was seeking to understand how the Data Collection Trespass Law will impact the State's ability to collect any information on any private or public land within the State to implement an adequate allegation or enforcement program that is protective of health and safety and compatibility with the NRC's requirements.

As indicated above, the State Attorney General's Office must respond to the above concerns and questions in comments 1-6. Your responses must explain how the Data Collection Trespass Law will not impact the State's ability to implement an adequate program to protect health and safety and compatibility with the NRC's regulatory program for allegations, investigations, enforcement, transmission of information to the NRC of relevant information impacting NRC's areas of regulatory authority or retention of records for the NRC's periodic review. Please reference any specific statutes, regulations or other relevant information to support your response.

If the State Attorney General's Office can adequately respond to our comments, this may address our concerns with the Data Collection Trespass Law's potential impact on the State's ability to develop a State radiation control program that is adequate to protect public health and safety and compatible with the NRC's regulatory program. If you would like for us to review this information prior to the submittal of your draft request or discuss this matter further, please contact the staff named below. An adequate response to this letter will also address the comments provided in our letter dated December 8, 2015, and e-mail dated April 29, 2016.

K. Wendtland

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If you have any questions regarding the comment, please contact Michelle Beardsley at (267) 884-2305 (Michelle.Beardsley@nrc.gov), or Stephen Poy at (301) 415-7135 (Stephen.Poy@nrc.gov).

Sincerely,

*/RA/
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Daniel S. Collins, Director
Division of Material Safety, State, Tribal
and Rulemaking Programs
Office of Nuclear Material Safety
and Safeguards

K. Wendtland

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