



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

April 25, 2017

President Anthony Reider
Flandreau Santee Sioux Tribe
P.O. Box 283
Flandreau, SD 57028

**SUBJECT: STATE OF WYOMING DRAFT APPLICATION TO ASSUME REGULATORY
AUTHORITY CURRENTLY HELD BY THE U.S. NUCLEAR REGULATORY
COMMISSION**

Dear President Reider:

I am writing to inform you that the Nuclear Regulatory Commission (NRC) has received, and is reviewing, a draft application from the State of Wyoming to join the agency's Agreement State Program and assume regulatory authority for activities related to uranium and thorium milling (also known as uranium recovery). The NRC's Agreement State Program allows the NRC to discontinue, and a State to assume, regulatory authority over radioactive materials and activities specified in an Agreement. The NRC approves the Agreement after finding the State's radiation control program is adequate to protect public health and safety and compatible with the NRC's nuclear materials program. Under the draft application, the NRC would retain regulatory authority over source and byproduct material not related to milling activities and special nuclear material in the State. The NRC would continue to consult with the Flandreau Santee Sioux Tribe, as appropriate, on these regulatory activities. However, the NRC would no longer consult on activities related to uranium and thorium milling in Wyoming.

On October 26, 2016, the State of Wyoming submitted a draft application to the NRC to pursue a limited agreement with the NRC to regulate activities related to uranium or thorium milling through the NRC's Agreement State Program. Since that time, the NRC has been reviewing the draft application and will provide comments to the State in April 2017. The NRC has also provided initial comments on the State's proposed regulations and legislation for the uranium recovery program¹.

The NRC will require the State of Wyoming to have a program that is adequate to protect public health and safety and compatible with the NRC's regulatory program. This includes requiring the State to have procedures for licensing actions that have a significant impact on the environment to provide: 1) a written environmental analysis of radiological and non-radiological impacts to public health and any impacts on surface or groundwater; 2) an opportunity for public comment; and 3) hearings during the license review process. The NRC cannot require a State to include tribal consultation as part of its licensing reviews. However, the State can provide additional environmental and historic and cultural review requirements. The Wyoming Department of Environmental Quality has also indicated that tribal consultation is important, and the Department is currently deliberating on how that process would work most efficiently within existing Wyoming law.

¹ <https://scp.nrc.gov/rulemaking.html#WY>

The NRC expects the State of Wyoming to submit its final application, which will incorporate the NRC's comments on the draft application and include the final version of their regulations and legislation in the July-September, 2017 timeframe. The NRC staff will conduct an analysis of the State's final application for compliance with the above requirements, and anticipates publishing the analysis and draft Agreement in the *Federal Register* for 30 days for public comment near the end of 2017. The Chairman of the Commission and the Governor of Wyoming would sign an Agreement if the Commission finds that Wyoming's proposed program is adequate to protect public health and safety and compatible with NRC's program. If an Agreement is finalized, the NRC will then discontinue its regulatory authority for uranium and thorium milling activities and transfer regulatory authority and related licenses to the State of Wyoming.

Enclosed is a fact sheet on the NRC's Agreement State Program and a set of frequently asked questions. The NRC will keep you informed as the State of Wyoming's application moves through the review and approval process.

If you have questions or concerns regarding the Agreement State Program, please contact Mr. Paul Michalak, Branch Chief, Agreement State Programs Branch at (301) 415-5804, or by e-mail at Paul.Michalak@nrc.gov.

Sincerely,

/RA Joseph Nick for/

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

cc: Mr. Garrie Kills A Hundred, THPO
P.O. Box 283
Flandreau, SD 57028

Enclosures:

1. Fact Sheet about the Agreement State Program
2. Frequently Asked Questions

SUBJECT: STATE OF WYOMING DRAFT APPLICATION TO ASSUME REGULATORY AUTHORITY CURRENTLY HELD BY THE U.S. NUCLEAR REGULATORY COMMISSION (April 25, 2017)

DISTRIBUTION:

MSTR R/F NMSS R/F Bill Maier, RSLO

ML16334A403 (P)

ML17103A281

OFC	NMSS/MSTR	NMSS/MSTR	NMSS/MSTR	NMSS/MSTR	OGC	NMSS/MSTR
NAME	Via email STalley	Via e-mail CEinberg	With edits DWhite	PMichalak	Via e-mail JOImstead	JNick for DCollins
DATE	11/15/16	11/30/16	11/29/16	12/01/16	4/5/17	4/25/17

OFFICIAL RECORD COPY

Frequently Asked Questions on the Agreement State Program and the Wyoming Agreement State Application

What is 11e. (2) byproduct material?

The Uranium Mill Tailings Radiation Control Act, (UMTRCA) expanded the categories of radioactive materials covered by the Atomic Energy Act of 1954, as amended (AEA) known as “11e.(2) byproduct material.” This byproduct material is broadly defined to encompass all tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content. The materials encompassed within the scope of the term “11e.(2) byproduct material” include a multitude of waste streams including, but not limited to, mill tailings, process fluids, restoration fluids, contaminated soils and even mill contaminated components.

What is an Agreement State?

Congress authorized the NRC in Section 274b. of the Atomic Energy Act to enter into Agreements that allow States to assume, and the NRC to discontinue, regulatory authority over source, byproduct and small quantities of special nuclear material. The State can then regulate byproduct, source and small quantities of special nuclear materials that are covered in the Agreement, using its own legislation, regulations or other legally binding provisions. The Commission will enter into an Agreement, if the Commission finds the State program adequate to protect public health and safety and compatible with the NRC’s regulatory program. The NRC ensures that an Agreement State program remains adequate and compatible through periodic review and assessment under the Integrated Materials Performance Evaluation Program (IMPEP).

How many states are currently in the Agreement State Program?

There are 37 Agreement States that regulate approximately 17,000 radioactive material licenses, or approximately 86% of all licenses nationally.

What exactly would the Agreement with Wyoming allow the State to regulate and what would the NRC continue to regulate?

The limited Agreement that Wyoming has requested will only allow the State to assume regulatory authority over the possession and use of source material involved in the extraction or concentration of uranium or 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. The NRC will retain regulatory authority over the other subcategories of source material, and all other categories of byproduct material and special nuclear material. There will be approximately 100 remaining radioactive material licensees that the NRC will continue to regulate.

Will the NRC maintain any regulatory authority over uranium and thorium milling in Wyoming after it becomes an Agreement State?

Under Section 274 of the AEA, the NRC does not *delegate* its regulatory authority to the Agreement State. The NRC *discontinues* its authority and the State assumes regulatory authority. The Agreement State administers an independent regulatory program and the NRC periodically assesses the adequacy to protect public health and safety and compatibility of an Agreement State Program under the agency's Integrated Materials Performance Evaluation Program.

Under Section 274o. of the AEA, the NRC does reserve some authority over the long-term management of the decommissioned uranium and thorium facilities. The State of Wyoming would be required to get the NRC's approval that a facility was appropriately decommissioned before the State can terminate the license. Uranium sites that are not in situ-leach facilities can be transferred to the U.S. Department of Energy, or the State, for long-term surveillance and caretaking.

What are the steps in the process by which a State becomes an Agreement State?

The major steps are:

- The Governor sends a letter to the NRC Chairman expressing the intent to become an Agreement State.
- The State submits a draft application to the NRC for review and comment.
- The Governor certifies that the State has an adequate program and submits a formal request that includes supporting legislation, regulations, program description and staffing.
- The NRC assesses the request and, after Commission approval, publishes the staff's assessment and proposed Agreement for a 30-day comment period.
- The NRC assesses public comments and prepares a final assessment
- After Commission approval, the Chairman and the Governor sign the agreement.

How long is the proposal review process that results in a State becoming an Agreement State?

The NRC's part of the process takes about a year to complete starting when the agency receives the formal request. Adding the time it takes for the State to develop its program and regulations, after it sends in a letter of intent, the entire process typically requires 3-5 years.

Where is Wyoming's application within this timeline?

The NRC has been working with the State of Wyoming since the fall of 2014. The Governor of the State of Wyoming submitted a letter of intent to the NRC Chairman on February 27, 2015. The NRC received the draft request application package from the State of Wyoming on October 26, 2016. Current projections are that the process will be complete and the Agreement signed in mid-2018.

What happens to current licensed facilities when the NRC discontinues authority?

The State of Wyoming will assume regulatory authority for any current licenses that have radioactive material covered under their agreement. The NRC would retain regulatory authority over the other 100 licensees in the State not associated with uranium milling.

If there are programmatic agreements in place for currently licenses, who will ensure that the terms of these agreements are carried out when the NRC discontinues its authority? Will the NRC amend or terminate these agreements?

The NRC is currently evaluating the effect of transferring a license to Wyoming if there is a related programmatic agreement or memorandum agreement at the site.

Will the National Historic Preservation Act (NHPA) and/or the National Environmental Policy Act (NEPA) reviews continue to be part of application reviews for licensing of uranium and thorium milling?

No, unless another federal agency, such as the Bureau of Land Management (BLM) or the Environmental Protection Agency (EPA) is involved in the licensing action. The NHPA and NEPA are federal statutes that apply to federal undertakings and major federal actions significantly affecting the quality of the human environment. Future licensing reviews would be State actions and subject to the regulations developed by the State of Wyoming. However Section 274o. of the AEA requires some procedures and written analysis of radiological and non-radiological impacts to public health and any impacts on surface or groundwater for activities that result in the production of 11.e.(2) material.

Would the transfer of regulatory authority from the NRC to the State of Wyoming be considered a federal undertaking as defined in the NHPA and therefore require consultation to comply with Section 106 with federally-recognized tribes and other concerned individuals and stakeholders?

No. The review and consideration of an application for an Agreement is not a federal undertaking that is subject to NHPA Section 106 review.

What opportunities are currently available or will be available in the future to comment on the State's program and the governing regulations?

Those interested in receiving notifications from the Wyoming Department of Environmental Quality of major developments in the process can enroll for email notifications at <http://deq.wy.gov/lqd/public-notices/land-quality>. Information can also be obtained from the Wyoming Uranium Recovery Program Manager, Ryan Schierman, ryan.schierman@wy.gov or (307) 777-7757.

The State of Wyoming published draft regulations for public comment on January 28, 2017 at <http://deq.wyoming.gov/lqd/resources/proposed-rules-regs/> and is accepting comments until 5:00 p.m. on May 1, 2017 electronically at <http://lq.wyomingdeq.commentinput.com/>. Written comments can be sent to the Wyoming Department of Environmental Quality, Land Quality Division, 200 W. 17th Street, Suite 10, Cheyenne, WY 82002 or faxed to (307) 635-1784.

If federally-recognized tribes have concerns about the Wyoming Agreement State proposal and the impact of the NRC's acceptance of Wyoming as an Agreement State on tribal engagement what are the channels for expressing these concerns?

Federally-recognized tribes may contact the NRC with any concerns about tribal engagement. Tribes may contact Paul Michalak, Branch Chief, NRC Agreement State Programs Branch, by email at Paul.Michalak@nrc.gov or phone (301) 415-5804 for more information or to raise concerns about the Wyoming Agreement State proposal.

What will happen to license applications that have been contested before the Atomic Safety Licensing Board (ASLB) that have not concluded when the Wyoming agreement goes into effect?

The NRC will make every effort to complete pending licensing actions prior to transfer of regulatory authority to Wyoming. In the months leading up to the date when the Agreement goes into effect, the NRC will determine what pending licensing actions cannot be completed prior to the effective date of the Agreement and will determine a logical place to discontinue their review. Some examples of where the NRC could discontinue licensing would be after the issuance of a request for additional information or the completion of the environmental assessment. This information would also be transferred to the Agreement State for their use in completing the review of any pending licensing actions in accordance with its compatible license review process.

Since the ASLB process only applies to those uranium milling licensing actions being considered by the NRC, the hearing process would be discontinued on the effective date of the Agreement. However, Section 274o. of the AEA requires, in the case of licenses issued by Wyoming under the Agreement, a process that includes an opportunity, after public notice, for written comments and a public hearing, with a transcript.

Will the State of Wyoming regulate activities on tribal land held in trust by the Federal government, tribal reservations, or allotted land?

No. Federally-recognized tribes and their land or reservations that are in an area of exclusive federal jurisdiction are only subject to the NRC's regulatory authority. The NRC will continue to regulate uranium and thorium milling operations and the management and disposal of 11e.(2) byproduct material, if they are on land or reservations under exclusive federal jurisdiction. There are currently no facilities in Wyoming that are located on tribal land. Case-by-case determinations will be needed to determine regulatory authority over tribal lands that are not under exclusive federal jurisdiction.

What if a federally-recognized tribe leases its land to a private operator? Who would regulate?

The NRC would still be the regulatory authority if a federally-recognized tribe leases its land under exclusive federal jurisdiction to a private operator. Case-by-case determinations would be needed to determine regulatory authority if the tribal lands are not under exclusive federal jurisdiction.