

4.1.3 Content of the Proposed Agreement

Vermont is applying for a limited Agreement transferring to the State the authority to regulate byproduct materials as defined in section 11e.(1) of the Atomic Energy Act (AEA); byproduct materials as defined in section 11e.(3) of the AEA; byproduct materials as defined in section 11e.(4) of the AEA; source materials; and special nuclear materials, in quantities not sufficient to form a critical mass. The proposed Agreement follows below, and is formatted in accordance with, and with the content from, the Exhibit in NRC Management Directive 5.8.

Vermont is not applying for an Agreement transferring to the State authority to regulate byproduct materials as defined in section 11e.(2) of the AEA; for the regulation of the land disposal of byproduct, source, or special nuclear waste received from other persons; or for 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 in the regulations or orders of the Commission.

The State of Vermont is requesting regulatory authority for Section 11e.(1) of the AEA.

The Atomic Energy Act, as revised in 1978 and in 2005 by the Energy Policy Act (EPAct), defines byproduct material in Section 11e.(1) as “any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or using special nuclear material”.

The State of Vermont is requesting regulatory authority for Section 11e.(3) of the AEA.

Byproduct materials as defined in section 11e.(3) of the AEA is ~~“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 any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction, before, on, or after the date of enactment of the EPAct for use for a commercial, medical, or research activity.”~~ [\[of the EPAct\] of this paragraph \[August 8, 2005\]](#) for use for a commercial, medical, or research activity.”

The State of Vermont is requesting regulatory authority for Section 11e.(4) of the AEA.

The definition in Section 11e.(4) is “any discrete source of naturally occurring radioactive material, other than source material, that the Commission, in consultation with the Administrator of the Environmental Protection Agency (~~EPA~~), the Secretary of the Department of Energy (~~DOE~~), the Secretary of the Department of Homeland Security (~~DHS~~), 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 ~~before, on, or after August 8, 2005 is extracted or converted after extraction is extracted or converted after extraction before, on, or after the date of enactment of the EPAct~~ for use in a commercial, medical, or research activity.”

The State of Vermont is requesting regulatory authority for source materials, and special nuclear materials, in ~~quantities~~ quantities not sufficient to form a critical mass.

AN AGREEMENT
BETWEEN
THE UNITED STATES NUCLEAR REGULATORY COMMISSION
AND
THE STATE OF VERMONT
FOR THE
DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY
AND
RESPONSIBILITY WITHIN THE STATE OF VERMONT PURSUANT TO
SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq. (hereinafter referred to as the Act), to enter into an agreements with the Governor of the State of Vermont (hereinafter referred to as the State) providing for discontinuance of the regulatory authority of the Commission within the State of Vermont under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), 11e.(2), 11e.(3) and 11e.(4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

WHEREAS, The Governor of the State of Vermont is authorized under 18 V.S.A. § 1653 to enter into this Agreement with the Commission; and

WHEREAS, The Governor of the State of Vermont certified on [DATE] that the State of Vermont (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on [DATE] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and

WHEREAS, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuming that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and

WHEREAS, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of Vermont acting on behalf of the State as follows:

ARTICLE I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State of Vermont under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

- A. Byproduct materials as defined in Section 11e.(1) of the Act;
- B. Byproduct materials as defined in Section 11e.(3) of the Act;
- C. Byproduct materials as defined in Section 11e.(4) of the Act;
- D. Source materials;
- E. Special nuclear materials, in quantities not sufficient to form a critical mass.

ARTICLE II

This Agreement does not provide for discontinuance of any authority, and the Commission shall retain authority and responsibility with respect to:

- 1. The regulation of the construction, ~~and~~ operation, and decommissioning of any production or utilization facility or any uranium enrichment facility;
- 2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or any production or utilization facility;
- 3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
- 4. The regulation of the disposal of such other byproduct material as the Commission from time to time determines by regulation or order should, because of the hazards thereof, not to be disposed without a license from the Commission;
- 5. 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;
- 6. The regulation of activities not exempt from Commission regulation as stated in 10 CFR Part 150;
- 7. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material;
- 8. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

ARTICLE III

With the exception of those activities identified in Article II, paragraphs one through five, this Agreement may be amended, upon application by the State and approval by the Commission, to include the additional areas specified in Article II, paragraphs ~~six~~, seven, and eight, whereby the State can exert regulatory authority and responsibility with respect to those activities and materials.

ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

ARTICLE V

This Agreement shall not affect the authority of the Commission under Section 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material

ARTICLE VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulation, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and the licensee performance that may have generic implication or otherwise be of regulatory interest.

ARTICLE VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed on Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State of Vermont may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act, if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State of Vermont has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE IX

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VII.

Done at ~~Montpelier~~Rockville, ~~Vermont~~Maryland this [date] day of [month], [year].

FOR THE UNITED STATES NUCLEAR
REGULATORY COMMISSION

, Chairman

Done at Montpelier, Vermont this [date] day of [month], [year].

FOR THE STATE OF VERMONT

, Governor

Commented [WD1]: Unless there will be a signing ceremony (that is option offered to the State), the document is signed seperately using the following format.