



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

January 12, 2018

OFFICE OF THE
GENERAL COUNSEL

Mr. James C. Kaste, Deputy Attorney General
Wyoming Attorney General Office
Water and Natural Resources Division
2320 Capitol Avenue
Cheyenne, WY 82002

Dear Mr. Kaste:

The NRC is requesting a letter from the Wyoming Attorney General's office listing the statutory provisions in Chapter 1 that provide authority for the proposed Agreement program. The NRC staff continues to have concerns that some of the statutory provisions outside of Article 20 "Nuclear Regulatory Agreement" (§§ 35-11-2001 through 35-11-2005) could affect Wyoming's ability to implement and enforce an adequate and compatible Agreement State program. These concerns must be addressed before the NRC staff can determine whether to recommend to the Commission that Wyoming has an adequate and compatible legal foundation to support the State's application for a limited Agreement.

On April 20, 2017, the NRC asked Wyoming to identify which non-Article 20 statutory provisions would apply to the Uranium Recovery Program (URP) under the proposed Agreement.¹ In response to these concerns, Wyoming stated that:

While the Wyoming Department of Environmental Quality (WDEQ) realizes that the statutes repeatedly refer to "mining/permits" it is important to understand that there are two separate processes involved in issuing a company the permissions to engage in activities in Wyoming. A company must obtain a permit to mine and a source material license. This is very similar to the process that currently exists between the NRC and WDEQ. The terms mining and milling as [they relate] to in situ operations are synonymous, however it may be helpful to distinguish them as mining relates to the permit to mine and milling relates to the source material license. There will be overlap in the two processes, and [the current overlap] with NRC [s licensing process] was one of the main motivating factors for Wyoming to seek an Agreement. For NRC review purposes, [the NRC's] review should focus on whether the requirements for a source material license are compatible with NRC requirements.²

This response does not address the NRC's request for Wyoming to identify which statutory provisions would apply to the URP program. The NRC needs a complete picture of Wyoming's statutory scheme for the Agreement State program to determine whether the proposed program

¹ See the NRC's April 20, 2017 letter (ML17062A962) commenting on the draft application package sent in October 2016.

² See Wyoming's Final Application for a Limited Agreement (submitted Nov. 16, 2017) (ML17319A921) "Response to NRC Comments on Wyoming Draft Application," Subsection 4.1 Legal Elements, Wyoming Response to Comment 1.

is adequate and compatible. Without a complete understanding of Wyoming's statutory framework, the NRC cannot make this determination.

Therefore the NRC is requesting a letter from the Wyoming Attorney General's office listing the statutory provisions in Chapter 1 that apply to the Agreement State program. The NRC will use this list to assess the adequacy and compatibility of the proposed Agreement State program. This list is necessary because it is difficult to identify whether non-Article 20 statutory provisions apply to the URP. For example, Article 20, Section § 35-11-2002(c) states: "[T]o the extent it is not inconsistent with the provisions of this article, article 4 of this chapter shall apply to all licenses issued and actions taken under this article." Some of the provisions in Article 4 are very detailed, such as § 35-11-406 "Application for permit; generally; denial; limitations" and § 35-11-415 "Duties of operator"; whereas provisions in Article 20 are silent or vague with respect these subjects. Therefore, to minimize confusion and to facilitate a quick review the NRC requests that the list address any apparent conflicts between Article 20 and other Articles in Chapter 1.

The information from the Attorney General's office will help the NRC determine whether Wyoming has adequate and compatible legal elements to support the application for the proposed Agreement. The NRC will consider this list of statutory provisions to be the complete and exclusive list of applicable statutory provisions for Wyoming's application and will rely on this list to determine whether Wyoming's statutory framework is adequate and compatible.

Please feel free to contact me directly *or to have your staff contact* Joan Olmstead (the staff attorney assigned to this review) at: Joan.Olmstead@nrc.gov if you have any questions.

Sincerely,



Mary B. Spencer, Assistant General Counsel
Reactor and Materials Rulemaking
Office of the General Counsel

cc: Kelly Shaw, Assistant Attorney General
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