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Kevin Williams, Deputy Director
United States Nuclear Regulatory Commission
Division of Material Safety, State, Tribal, and Rulemaking Programs
Office of Nuclear Material Safety and Safeguards
Mail Code: T8-E18
Washington, D.C. 20555-0001

Re: **Utah Attorney General Statement in Response to NRC Letter (ML15306A276)**

Dear Mr. Williams:

During the recent Follow-Up/Periodic Integrated Materials Performance Evaluation Process review of the State of Utah's Radioactive Materials Program, it was determined that the United States Nuclear Regulatory Commission's ("NRC") request for an opinion from the Utah Attorney General's Office, as stated in a letter dated November 25, 2015, (ML15306A276) regarding inspection authority, remains open. This letter serves as a response to the NRC's request.

The comment that remains open in the NRC's view is Comment No. 3, which was set forth in the NRC's March 18, 2015, letter regarding the radioactive materials inspection authority of the Utah Division of Waste Management and Radiation Control (the "Division"). The NRC's comment is as follows:

- 3) In Utah Senate Bill ("SB") 244, 1st Substitute (line 838)/10 CFR 61.82 (NRC): The proposed State Section authorizes the new State Director of the consolidated Division of Waste Management and Radiation Control to "conduct inspections pursuant to UCA 19-6-109." UCA 19-6-109 authorizes any officer of the Director, "at any reasonable time . . . (to) inspect any property, premise, or place on or at which solid or hazardous wastes are generated, transported, stored, treated, or disposed of . . . for the purpose of ascertaining compliance with this part and the rules of the board."

In a February 28, 2013, letter from the NRC to the Director of the Division of Radiation Control, (ML13052A441), the NRC issued a comment indicating that, although Utah may verify waste shipped to the state under the waste acceptance criteria, a similar proposed State Section [UCA 19-3-106.4(2)] was outside of the 274b Agreement authority of the State, as Utah did not have

the regulatory authority to conduct inspections of facilities under the regulatory jurisdiction of the NRC or other Agreement States, and Utah's State section authority needed to be limited to only the verification of the waste being disposed of in the State.

By authorizing the Director under the newly combined Division of Waste Management and Radiation Control to conduct these inspections, the State's proposed legislation contemplates inspections of facilities beyond the waste shipment verification purview of Utah's 274b authority. The plain language of SB 244 indicates that the Division of Solid and Hazardous Waste is being consolidated with the Division of Radiation Control, and the new Director of both (now-combined) previous Divisions will have this inspection authority. Furthermore, the State's contemplated inspection authority reference is located in what was previously one of the sections applying specifically to the Director of the State's Division of Solid and Hazardous Waste. As such, whether or not Utah has plans to conduct inspections, the current wording of this State provision at least contemplates authority to conduct such inspections, and as such, exceeds Utah's 274b authority.

The Division responded to this comment in its letter to the NRC dated October 21, 2015. In short, the Director indicated that, in connection with radioactive materials, he did not rely on his authority to conduct inspections pursuant to Utah Code § 19-6-109 (relating to solid and hazardous waste), but rather relied on a separate provision of the Utah Code, § 19-6-107(3)(i) (providing authority to the Director "for the purposes of inspecting and investigating conditions and records concerning radiation sources"). According to the NRC's November 25, 2015, letter, however, this response was found to be inadequate to respond to its comment:

"Utah needs to provide an Attorney General opinion specifically stating whether the legislation limits the inspection jurisdiction authority to exclude inspections of facilities under the regulatory jurisdiction of the NRC or other Agreement States."

Id. at 1. The purpose of this letter is to satisfy the NRC's request.

The Office of the Utah Attorney General does not usually provide formal legal opinions. The contents of this letter do not reflect any determination made by Utah's Attorney General. Rather, the statements made herein are my opinions offered in my capacity as Assistant Attorney General. That said, I am the Assistant Attorney General assigned to cover the area of radiation control and advise the Director as to his jurisdiction to conduct inspections (and otherwise), the question of law presented is not particularly challenging, and the applicable legal authorities are clear. We are hopeful that this letter will be adequate to meet the NRC's requirements.

As an initial matter, the Director's authority to inspect and investigate as to matters relating to radioactive materials does not derive from Utah Code § 19-6-109, as this code section relates to solid and hazardous waste, which are substances and materials that would not generally include radioactive materials. Rather, the Utah Legislature's authorization for the Director to conduct inspections and investigations relating to radioactive materials derives from Utah Code, § 19-6-107(3)(i) (providing authority to the Director "for the purposes of inspecting and investigating conditions and records concerning radiation sources").

Second, the scope of the jurisdiction of the Utah Legislature to authorize the Director of the Division to conduct inspections is clearly bounded by the Utah Constitution. Article II, Section 1, of the Utah Constitution defines the territorial boundaries of the State of Utah. Article VI of the Utah Constitution vests certain legislative powers of the State of Utah in the Utah Legislature. As a matter of constitutional law, it is apparent that the powers of the Utah Legislature do not extend beyond the territorial limits of the boundaries of the State of Utah as described in Article II of the Constitution of the State of Utah.

Based on the foregoing authorities, it is my view that (i) the Director's legal authority to conduct inspections relating to radioactive materials derives from Utah Code § 19-6-107(3)(i) and not from Utah Code § 19-6-109; and, (ii) the Utah Legislature's authority is limited to the territorial boundaries of the State of Utah. As a result, no provision in the Utah Code in general, or in the legislation at issue here in particular, provides the Director with the legal authority to conduct inspections of facilities that fall under the regulatory jurisdiction of the NRC or other Agreement States. That said, it would be expected that the NRC and Agreement States would be amenable to collaborating with the Director as to questions relating to the characterization, management, packaging, and classification of radioactive materials and wastes destined for disposal within the State of Utah. We trust that this letter answers the NRC's question and otherwise meets the NRC's requirements.

Sincerely,



Bret F. Randall,
Assistant Attorney General

BFR/srb

cc: Scott Anderson, Division of Waste Management and Radiation Control