

**NUCLEAR REGULATORY COMMISSION**

**[NRC-2018-0104]**

**State of Wyoming: NRC Staff Assessment of a Proposed Agreement  
Between the Nuclear Regulatory Commission and the State of Wyoming**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed state agreement; request for comment.

**SUMMARY:** By letter dated November 14, 2017, Governor Matthew H. Mead of the State of Wyoming requested that the U. S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of Wyoming as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (AEA).

Under the proposed Agreement, the Commission would discontinue, and the State of Wyoming would assume, regulatory authority over the management and disposal of byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material associated with uranium or thorium milling within the State. Pursuit to Commission direction, the proposed Agreement would state that the NRC will retain regulatory authority over the American Nuclear Corporation (ANC) license.

As required by Section 274e. of the AEA, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of a draft assessment by the NRC staff of the State of Wyoming's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and

safety. Comments are also requested on the draft staff assessment, the adequacy of the State of Wyoming's program, and the State's program staff, as discussed in this notice.

The proposed Agreement would exempt persons who possess or use byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities in the State of Wyoming from portions of the Commission's regulatory authority. Radioactive materials not covered by the proposed Agreement will continue to be subject to the Commission's regulatory authority. Section 274e. of the AEA requires that the NRC publish these exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the *Federal Register* and are codified in the NRC's regulations.

**DATES:** Submit comments by July 26, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by the following method:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2018-0104**. Address questions about NRC dockets to Jennifer Borges; telephone: 301-287-9127; e-mail: [Jennifer.Borges@nrc.gov](mailto:Jennifer.Borges@nrc.gov). For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Stephen Poy, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-7135, e-mail: [Stephen.Poy@nrc.gov](mailto:Stephen.Poy@nrc.gov); or Paul Michalak, telephone: 301-415-5804, e-mail: [Paul.Michalak@nrc.gov](mailto:Paul.Michalak@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining Information and Submitting Comments**

**A. Obtaining Information**

Please refer to Docket ID **NRC-2018-0104** when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2018-0104**.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[ADAMS Public Documents](#)” and then select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by e-mail to

[hdr.resource@nrc.gov](mailto:hdr.resource@nrc.gov). The draft application for a Section 274 Atomic Energy Act Agreement from the State of Wyoming, the final Wyoming Agreement State application, and the Draft Assessment of the Proposed Wyoming Program for the Regulation of Agreement Materials documents are available in ADAMS under Accession Nos. ML16300A294, ML17319A921, and ML18094B074.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

## B. Submitting Comments

Please include Docket ID **NRC-2018-0104** in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## **II. Additional Information on Agreements entered under Section 274 of the AEA**

Since Section 274 of the AEA was added in 1959, the Commission has entered into Agreements with 37 States (Agreement States). The 37 Agreement States currently regulate approximately 16,500 Agreement material licenses, while the NRC regulates approximately 2,800 licenses. Under the proposed Agreement, 14 NRC uranium mill licenses will transfer to the State of Wyoming. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e. of the AEA requires that the terms of the proposed Agreement be published in the *Federal Register* for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of that requirement.

## **III. Proposed Agreement with the State of Wyoming**

### **Background**

(a) Section 274b. of the AEA provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of these materials. The radioactive materials, sometimes referred to as “Agreement materials,” are byproduct materials as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(4) of the AEA; source material as defined in Section 11z. of the AEA; and special nuclear material as defined in Section 11aa. of the AEA, restricted to quantities not sufficient to form a critical mass.

The radioactive materials and activities (which together are usually referred to as the “categories of materials”) that the State of Wyoming requests authority over are the possession and use of byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (source material associated with milling activities).

(b) The proposed Agreement contains articles that

- i) Specify the materials and activities over which authority is transferred;
- ii) Specify the materials and activities over which the Commission will retain regulatory authority;
- iii) Continue the authority of the Commission to safeguard special nuclear material, and restricted data and protect common defense and security;
- iv) Commit the State of Wyoming and the NRC to exchange information as necessary to maintain coordinated and compatible programs;
- v) Provide for the reciprocal recognition of licenses;
- vi) Provide for the suspension or termination of the Agreement; and
- vii) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the proposed Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of Wyoming.

(c) The regulatory program is authorized by law under the State of Wyoming Statute Section 35-11-2001, which provides the Governor with the authority to enter into an Agreement with the Commission. The State of Wyoming law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the State. In a letter dated November 14, 2017, Governor Mead certified that the State of Wyoming has a program for the control of radiation hazards that is adequate to protect public health and safety within the State of Wyoming for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. After the effective date of the Agreement, licenses issued by NRC would continue in effect as State of Wyoming licenses until the licenses expire or are replaced by State-issued licenses.

(d) The NRC draft staff assessment finds that the Wyoming Department of Environmental Quality, Land Quality Division, Uranium Recovery Program, is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement materials. Pursuant to Commission direction, the proposed Agreement includes a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35-11-2004(c) to be compatible with AEA Section 83b.(1)(A), or the Agreement will terminate without further NRC action. The proposed Agreement also explicitly states that, prior to the requisite amendment of Wyoming Statute Section 35-11-2004(c), the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the Federal government. Pursuant to Commission direction, the Agreement contains a provision that requires the State of Wyoming to revise Statute Section 35-11-2004(c) during the next legislative session to be compatible with AEA Section 83b.(1)(A). If the Wyoming Statute Section 35-11-

2004(c) is not amended by the end of the 2019 legislative session, the Agreement will terminate.

### **Summary of the Draft NRC Staff Assessment of the State of Wyoming's Program for the Regulation of Agreement Materials**

The NRC staff has examined the State of Wyoming's request for an Agreement with respect to the ability of the State's radiation control program to regulate Agreement materials. The examination was based on the Commission's Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," (46 FR 7540; January 23, 1981, as amended by Policy Statements published at 46 FR 36969; July 16, 1981, and at 48 FR 33376; July 21, 1983) (Policy Statement), and the Office of Nuclear Material Safety and Safeguards Procedure SA-700, "Processing an Agreement" (available at <https://scp.nrc.gov/procedures/sa700.pdf> and [https://scp.nrc.gov/procedures/sa700\\_hb.pdf](https://scp.nrc.gov/procedures/sa700_hb.pdf)). The Policy Statement has 36 criteria that serve as the basis for the NRC staff's assessment of the State of Wyoming's request for an Agreement. The following section will reference the appropriate criteria numbers from the Policy Statement that apply to each section.

(a) Organization and Personnel. These areas were reviewed under Criteria 1, 2, 20, 24, 33, and 34 in the draft staff assessment. The State of Wyoming's proposed Agreement materials program for the regulation of radioactive materials is the Uranium Recovery Program. The Uranium Recovery Program will be located within the existing Land Quality Division of the Wyoming Department of Environmental Quality.

The educational requirements for the Uranium Recovery Program staff members are specified in the State of Wyoming's personnel position descriptions and meet the



NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold a Bachelor of Science Degree or Master's Degree in one of the following subject areas: environmental science, health physics, nuclear engineering, geology, or ecology. All have training and work experience in radiation protection. Supervisory level staff have at least 5 years of working experience in radiation protection, with most having more than 10 years of experience.

The State of Wyoming performed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the State of Wyoming's analysis, the State has an adequate number of staff to regulate radioactive materials under the terms of the proposed Agreement. The State of Wyoming will employ the equivalent of 7.2 full-time professional and technical staff to support the Uranium Recovery Program.

The State of Wyoming has indicated that the Uranium Recovery Program has an adequate number of trained and qualified staff in place. The State of Wyoming has developed qualification procedures for license reviewers and inspectors that are similar to the NRC's procedures. The Uranium Recovery Program staff is accompanying the NRC staff on inspections of NRC licensees in Wyoming. The Uranium Recovery Program staff is also actively supplementing their experience through direct meetings, discussions, and facility visits with the NRC licensees in the State of Wyoming and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the Uranium Recovery Program staff identified by the State of Wyoming to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of Agreement materials.

(b) Legislation and Regulations. These areas were reviewed under Criteria 1-14, 17, 19, 21, and 23-33 in the draft staff assessment. The Wyoming Statutes Sections 35-11-2001(a) through (c) provide the authority to enter into the Agreement and establish the Wyoming Department of Environmental Quality as the lead agency for the State's Uranium Recovery Program. The Department has the requisite authority to promulgate regulations under Wyoming Statute Section 35-11-2002(b) for protection against radiation. The Wyoming Statutes Sections 35-11-2001 through -2005 also provide the Uranium Recovery Program the authority to issue licenses and orders; conduct inspections; and enforce compliance with regulations, license conditions, and orders. The Wyoming Statute Section 35-11-2003(d) requires licensees to provide access to inspectors.

The Wyoming Statute Section 35-11-2001(e) does not provide the State of Wyoming with authority over independent or commercial laboratories. Under the proposed Agreement, the NRC would retain regulatory authority over laboratory facilities that are not located at facilities licensed under the State of Wyoming's regulatory authority. The State of Wyoming would only regulate laboratory facilities located at uranium or thorium mills. The NRC staff verified that the State of Wyoming adopted the relevant NRC regulations in parts 19, 20, 40, 71, and 150 of title 10 of the *Code of Federal Regulations* (10 CFR), into the Wyoming Uranium Recovery Program Rules Chapters 1 through 9. Therefore, on the proposed effective date of the Agreement, the State of Wyoming will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct materials as defined in Section 11e.(2) of the AEA and source material associated with milling activities. The NRC staff also verified that the State of Wyoming will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. These areas were reviewed under Criteria 8, 9a, 11, 29, 30, 31, and 32 in the draft staff assessment. The State of Wyoming has adopted NRC compatible requirements for the handling and storage of radioactive material. The State of Wyoming has adopted an adequate and compatible set of radiation protection regulations that apply to byproduct material as defined in Section 11e.(2) of the AEA and source material associated with milling activities.

As a result of the class of byproduct material it will be regulating (Section 11e.(2) of the AEA), the State of Wyoming is not required to have regulations compatible to 10 CFR part 61 for waste disposal. Rather, the State of Wyoming is required to have regulations that are compatible with 10 CFR part 40 for the disposal of byproduct material as defined in Section 11e.(2) of the AEA and source material associated with milling activities. The NRC staff confirmed that the State of Wyoming has adopted regulations that are compatible with the NRC regulations in 10 CFR part 40 for the disposal of byproduct material and source material associated with milling activities, which are equivalent to the applicable standards contained in 10 CFR part 61.

These regulations address the general requirements for waste disposal and are applicable to all licensees covered under this proposed Agreement.

The NRC staff identified one portion of the Wyoming Statute that is potentially not compatible with NRC requirements. Section 83b.(1)(A) of the AEA ensures that ownership of the byproduct material itself is inseparable from the site on which it is disposed. Consequently, the State of Wyoming has the option of taking title to the material and its disposal site, but the Uranium Mill Tailings Radiation Control Act (UMTRCA) does not permit a State to bifurcate ownership of the disposed byproduct material and the property rights necessary to ensure its safe disposal. The Wyoming Statute Section 35-11-2004(c), enacted in anticipation of the State of Wyoming's

assumption of the NRC's regulatory authority for uranium and thorium milling, could permit the bifurcation of the disposed byproduct material and its disposal site by the State. As discussed in Criterion 30c. of the draft staff assessment, this bifurcation of the land and the disposed byproduct material could conflict with the AEA (as amended by UMTRCA), and Article II.B.2.b. in the proposed Agreement.

Based on Commission direction, the NRC staff concluded that Criterion 30c. is satisfied in the following manner: the Commission could complete the process for the final application package for the Agreement, including publishing the proposed Agreement for comment, by noting that the Commission's finding of compatibility is contingent on the State of Wyoming revising this provision, during the next legislative session, to be compatible with AEA Section 83b.(1)(A). Thus, an Agreement could be executed, but it would include a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35-11-2004(c) to be compatible with AEA Section 83b.(1)(A), or the Agreement will terminate without further NRC action. The Agreement would also explicitly state that the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the federal government. The NRC staff determined that there is little practical risk that the State of Wyoming's current statutory provisions would result in the bifurcation of the 11e.(2) byproduct material from the land since the NRC is required to review and approve any State-proposed termination of a uranium mill license.

(d) Transportation of Radioactive Material. This area was reviewed under Criteria 10 and 35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations in 10 CFR part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive

material for transport.

Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials.

(e) Recordkeeping and Incident Reporting. These areas were reviewed under Criteria 1, 11, and 35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the sections of the NRC regulations that specify requirements for licensees to keep records and to report incidents or accidents involving the State's regulated Agreement materials.

(f) Evaluation of License Applications. This area was reviewed under Criteria 1, 7, 8, 9a, 13, 14, 20, 23, 25, and 29-35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The State of Wyoming has also developed a licensing procedure manual, along with accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. These areas were reviewed under Criteria 1, 16, 18, 19, 23, 35, and 36 in the draft staff assessment. The State of Wyoming has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The State of Wyoming's Uranium Recovery Program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. Additionally, the State of Wyoming has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. This area was reviewed under Criterion 23 in the draft staff assessment. The State of Wyoming is bound by requirements specified in its State law for rulemaking, issuing licenses, and taking enforcement actions. The State of Wyoming has also adopted administrative procedures to assure fair and impartial treatment of license applicants. The State of Wyoming law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. This area was reviewed under Criteria 25, 26, and 27 in the draft staff assessment. The State of Wyoming law provides for the recognition of existing NRC and Agreement State licenses and the State has a process in place for the transition of active NRC licenses. Upon the effective date of the Agreement, all active uranium recovery NRC licenses issued to facilities in the State of Wyoming, with the exception of the ANC license, will be recognized as Wyoming Department of Environmental Quality licenses.

The State of Wyoming also provides for “timely renewal.” This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision.

The State of Wyoming regulations, in Chapter 4, Section 6(d), provide exemptions from the State’s requirements for the NRC and the U.S. Department of Energy contractors or subcontractors; the exemptions must be authorized by law and determined not to endanger life or property and to otherwise be in the public interest. The proposed Agreement commits the State of Wyoming to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State’s program will continue to be compatible with the Commission’s program

for the regulation of Agreement materials. The proposed Agreement specifies the desirability of reciprocal recognition of licenses, and commits the Commission and the State of Wyoming to use their best efforts to accord such reciprocity. The State of Wyoming would be able to recognize the licenses of other jurisdictions by order or specific license.

There are six UMTRCA Title II sites in the State of Wyoming (ADAMS Accession No. ML16300A294) undergoing decommissioning. These sites are: 1) Anadarko Bear Creek, Powder River Basin; 2) Pathfinder, Lucky Mc, Gas Hills; 3) Umetco Minerals Corporation, Gas Hills; 4) Western Nuclear Inc., Split Rock, Jeffrey City; 5) Exxon Mobile, Highlands, Converse County; and 6) ANC, Gas Hills.

The State of Wyoming indicated it was opposed to assuming regulatory authority over the ANC site because the licensee is insolvent. To address the State of Wyoming's proposed exclusion of the ANC site from the proposed Agreement, the NRC staff provided SECY-17-0081 "Status and Resolution of Issues Associated with the Transfer of Six Decommissioning Uranium Mill Sites to the State of Wyoming" (ADAMS Accession No. ML17087A355) to the Commission. In SRM-SECY-17-0081 (ADAMS Accession No. ML17277A783), the Commission approved the NRC staff's recommendation for the NRC to retain regulatory authority over the ANC site and stated that the Commission's retention of the ANC site "is not a change to the Commission's current Agreement State policy, but is instead an exception to that policy based on case-specific facts." Article II.A.14. of the proposed Agreement specifies that the Commission retains regulatory authority over the ANC license.

With regard to the five other decommissioning UMTRCA sites, the NRC staff has developed a draft Memorandum of Understanding (MOU) between the NRC and the State of Wyoming as a separate document from the proposed Agreement. The objective

of the MOU is to delineate specific actions that the NRC and the State of Wyoming would take to verify completion of the decommissioning of these sites. The MOU has been drafted and the NRC staff is currently working with the State of Wyoming to delineate how license termination will be addressed for each of the five sites. An assessment of the decommissioning status of the five UMTRCA sites and the activities that need to be completed prior to license termination (ADAMS Accession No. ML17040A501) has been completed. Once the MOU is completed and signed by both the NRC and the State of Wyoming, it will be published in the *Federal Register*.

### **Staff Conclusion**

Section 274d. of the AEA provides that the Commission shall enter into an Agreement under Section 274b. with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the Agreement materials within the State and that the State desires to assume regulatory responsibility for the Agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o. and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification of Wyoming Governor Mead, and the supporting information provided by the Uranium Recovery Program of the Wyoming Department of Environmental Quality and Wyoming's Office of the Attorney General. Based upon this review, the NRC staff



concludes that the State of Wyoming Uranium Recovery Program satisfies the Section 274d. criteria as well as the criteria in the Commission's Policy Statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement." As noted above, the proposed Agreement includes a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35-11-2004(c) to be compatible with AEA Section 83b.(1)(A) or the Agreement will terminate without further NRC action. The proposed Agreement also explicitly states that the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the Federal government. Pursuant to Commission direction, the NRC staff finding of compatibility is contingent on the State of Wyoming revising Wyoming Statute Section 35-11-2004(c) during the next legislative session to be compatible with AEA Section 83b.(1)(A). The proposed State of Wyoming program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing is compatible with the Commission's program and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. Therefore, the proposed Agreement meets the requirements of Section 274 of the AEA.

Dated at Rockville, Maryland, this 20<sup>th</sup> day of June, 2018.

For the Nuclear Regulatory Commission.

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Andrea L. Kock, Acting Director,  
Division of Materials Safety, Security, State,  
and Tribal Programs,  
Office of Nuclear Material Safety  
and Safeguards.

## APPENDIX A

### AN AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE STATE OF WYOMING FOR THE DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE 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. Section 2011 *et seq.* (hereinafter referred to as “the Act”), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct material as defined in Section 11e.(2) of the Act and source material involved in the extraction or concentration of uranium or thorium in source material or ores at milling facilities; and,

WHEREAS, The Governor of the State of Wyoming is authorized under Wyoming Statute Section 35-11-2001 to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State of Wyoming certified on November 14, 2017, that the State of Wyoming (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 assuring 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 Act;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State of Wyoming 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 under Chapters, 7, and 8, and Section 161 of the Act with

respect to the following materials:

- A. Byproduct material as defined in Section 11e.(2) of the Act; and,
- B. Source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (hereinafter referred to as “source material associated with milling activities”).

## ARTICLE II

- A. This Agreement does not provide for the discontinuance of any authority, and the Commission shall retain authority and responsibility, with respect to:
  - 1. Byproduct material as defined in Section 11e.(1) of the Act;
  - 2. Byproduct material as defined in Section 11e.(3) of the Act;
  - 3. Byproduct material as defined in Section 11e.(4) of the Act;
  - 4. Source material except for source material as defined in Article I.B. of this Agreement;
  - 5. Special nuclear material;
  - 6. The regulation of the land disposal of byproduct, source, or special nuclear material received from other persons, excluding 11e.(2) byproduct material or source material described in Article I.A. and B. of this Agreement;
  - 7. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
  - 8. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

9. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
  10. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in the regulations or orders of the Commission;
  11. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not to be so disposed without a license from the Commission;
  12. The regulation of activities not exempt from Commission regulation as stated in 10 CFR part 150;
  13. The regulation of laboratory facilities that are not located at facilities licensed under the authority relinquished under Article I.A. and B. of this Agreement; and,
  14. Notwithstanding this Agreement, the Commission shall retain regulatory authority over the American Nuclear Corporation license.
- B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:
1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable

standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as its disposal site for such material. Such reserved authority includes:
  - a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission and with ownership requirements for such material and its disposal site;
  - b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);
  - c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

- d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State;
  - e. The authority to require the Secretary of the United States Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety and other actions as the Commission deems necessary; and,
  - f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.
3. The Commission retains the authority to reject any State request to terminate a license that proposes to bifurcate the ownership of 11e.(2) byproduct material and its disposal site between the State and the Federal government. Upon passage of a revised Wyoming Statute Section 35-11-2004(c) that the NRC finds compatible with Section

83b.(1)(A) of the Act, this paragraph expires and is no longer part of this Agreement.

### ARTICLE III

With the exception of those activities identified in Article II, A.8 through A.11, this Agreement may be amended, upon application by the State and approval by the Commission to include one or more of the additional activities specified in Article II, A.1 through A.7, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

### 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 for licensing issued by the Commission.

### ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 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 regulations 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 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 in 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

- A. 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, 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 has not complied with one or more of the requirements of Section 274 of the Act.
  - 1. This Agreement will terminate without further NRC action if the State does not amend Wyoming Statute Section 35-11-2004(c) to be compatible with Section 83b.(1)(A) of the Act by the end of the 2019 Wyoming legislative session. Upon passage of a revised Wyoming Statute Section 35-11-2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of the Agreement.
  
- B. 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

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity that results in production of such material, the State shall comply with the provisions of Section 274o. of the Act, if in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material.

- A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity that results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,
- B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

ARTICLE X

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

Done at [location] this [date] day of [month], 2018.

For the Nuclear Regulatory Commission.

Kristine L. Svinicki, Chairman.

Done at [location] this [date] day of [month], 2018.

For the State of Wyoming.

Matthew H. Mead, Governor