



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

October 17, 1990

RELEASED TO THE PDR

10/26/90 *g*
Date Initials

MEMORANDUM FOR: Harold R. Denton, Director
Office of Governmental and
Public Affairs

FROM: Samuel J. Chilk, Secretary *SC*

SUBJECT: SECY-90-253 - PROPOSED AMENDMENT NUMBER ONE
TO THE AGREEMENT BETWEEN THE STATE OF
ILLINOIS AND U.S. NUCLEAR REGULATORY
COMMISSION PURSUANT TO SECTION 274 OF THE
ATOMIC ENERGY ACT OF 1954, AS AMENDED

This is to advise you that the Commission (with all Commissioners agreeing) has approved the proposed amended agreement with Illinois subject to the attached revisions to the proposed letters to Governor Thompson and the Congressional Committees; the proposed public announcement; and the Federal Register Notice.

If and when the State of Illinois proposes to impose alternative requirements, the State's submittal, together with the staff's analysis and recommendations regarding that submittal (including the type of hearing to be conducted and the scope of issues for that hearing), should be submitted to the Commission for its consideration.

The staff should submit to the Commission recommendations with regard to how it should go about carrying out its section 2740 responsibilities in the other Agreement States with 11e.(2) byproduct authority, in a manner that will ensure that the Commission will be in a position to -- (i) provide notice and opportunity for a public hearing in the event that the State proposes to impose alternative requirements at sites covered under such Agreements; and (ii) determine whether such alternative requirements will achieve a level of protection that is equivalent to or more stringent than that afforded by the Commission's regulations.

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The staff should proceed with coordination of the signing of the agreement by mail.

Attachments:

As Stated

cc: Chairman Carr
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
OGC
EDO



CHAIRMAN

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

The Honorable James R. Thompson
Governor of Illinois
Springfield, Illinois 62706

Dear Governor Thompson:

I am pleased to inform you that the Nuclear Regulatory Commission (NRC) has approved your proposed Amendment to the Agreement under which the NRC will discontinue and the State of Illinois will assume regulatory authority over 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material in accordance with Section 274 of the Atomic Energy Act, as amended.

The Commission has determined that the Illinois program for regulation of 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material generally is compatible with the Commission's program for the regulation of like materials and adequate to protect the public health and safety with respect to the materials covered by the proposed amendment. However, certain standards adopted by Illinois differ from the standards adopted and enforced by the Commission for the same purpose. In accordance with the requirements of Section 2740 of the Atomic Energy Act, the Commission evaluated those differing standards in general, without reference to a particular site, and determined that those standards are adequate for purposes of amending the Commission's agreement with Illinois. If, at some time in the future, the State seeks to apply those or other differing standards to a particular site, including the West Chicago Rare Earths Facility site, Section 2740 requires the Commission to provide further notice and opportunity for a public hearing and to determine whether the State's differing standards will achieve a level of stabilization and containment of that site, and a level of protection for public health, safety, and the environment from both radiological and nonradiological hazards associated with the site, which is equivalent to, or more stringent than, the level which would be achieved by any requirements adopted and enforced by the Commission for the same purpose.

In order to enable the Commission to carry out its responsibilities under Section 2740 of the Atomic Energy Act to provide notice and opportunity for a public hearing in the event that the State proposes to impose alternative requirements at

sites covered under this agreement, as well as to permit the Commission to determine whether such alternative requirements will achieve a level of protection that is equivalent to or more stringent than that afforded by the Commission's regulations, the State shall notify the Commission in advance of when the State proposes to impose standards that differ from those established by the Commission. This includes all instances where the State's proposed alternative requirements, as contained either in specific State regulations or as proposed for application at a specific site, -- (1) are either more or less stringent than the requirements established by the Commission; (2) address matters where the Commission has affirmatively decided not to impose requirements; (3) involve the exercise by the State of its authority to grant exemptions from requirements established by the State; or (4) add to or remove the flexibility that would otherwise be available to the licensee in complying with NRC's standards. Following notification by the State, and prior to the Commission's publication of a notice, we would ask that the State present the rationale for the application of such alternative requirements, together with an analysis of whether such alternative requirements will achieve a level of protection that is equivalent to or more stringent than that afforded by the Commission's regulations.

I am pleased to enclose three (3) copies of the Agreement for your signature. Following your execution of the Amendment to the Agreement, please return two (2) copies to NRC. The third copy is for retention by the State.

On behalf of the Commission, I congratulate you, your staff, and the State of Illinois for taking this important step in Federal-State relations.

Sincerely,

Kenneth M. Carr

Enclosure:
As Stated

The Honorable Morris K. Udall, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We are pleased to advise the Committee that, pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, entitled "Cooperation With States," the Commission on _____ approved a proposed amendment to the Agreement with the State of Illinois under which the State will assume regulatory authority over 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material. Also, enclosed is a copy of the public announcement which we issued.

In his proposal requesting that the Commission amend the Agreement with the State, Governor Thompson certified that the State of Illinois has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials covered by the proposed amendment to the Agreement, and that the State desires to assume regulatory responsibility for such materials.

The proposed amendment to the Agreement and the staff's assessment of the proposed State program were published in the Federal Register for public comments as required by Section 274e of the Atomic Energy Act, as amended. Copies of the proposal were made available for public inspection at the Commission's Public Document Room.

The Commission has determined that the Illinois program for regulation of 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material generally is compatible with the Commission's program for the regulation of like materials and adequate to protect the public health and safety with respect to the materials covered by the proposed amendment. However, certain 11e.(2) standards adopted by Illinois differ from the standards adopted and enforced by the Commission for the same purpose. In accordance with the requirements of Section 274o of the Atomic Energy Act, the Commission evaluated those differing 11e.(2) standards in general, without reference to a particular

site, and determined that those standards are adequate for purposes of amending the Commission's agreement with Illinois. If, at some time in the future, the State seeks to apply those or other differing standards to a particular site, including the West Chicago Rare Earths Facility site, Section 2740 requires the Commission to provide further notice and opportunity for a public hearing and to determine whether the State's differing standards will achieve a level of stabilization and containment of that site, and a level of protection for public health, safety and the environment from both radiological and nonradiological hazards associated with the site, which is equivalent to, or more stringent than, the level which would be achieved by any requirements adopted and enforced by the Commission for the same purpose.

The Agreement was executed on _____, 1990 with an effective date of _____, 1990.

Sincerely,

Dennis K. Rathbun, Director
Congressional Affairs
Office of Governmental and
Public Affairs

Enclosures:
As Stated

cc: Representative James V. Hansen

PROPOSED PUBLIC ANNOUNCEMENT

NRC APPROVES AMENDMENT TO ILLINOIS AGREEMENT
ALLOWING STATE TO CONTROL MILL TAILINGS

The Nuclear Regulatory Commission has approved an amendment to the Agreement with Illinois under which that State will assume regulatory authority over uranium and thorium mills and mill tailings. The amended agreement will become effective on , 1990.

There is one site in Illinois which contains mill tailings, the Kerr-McGee Chemical Corporation's West Chicago Rare Earths Facility.

The amendment supplements a 1987 agreement with Illinois that transferred responsibility for licensing, rulemaking, inspection and enforcement concerning the use of byproduct materials, source materials uranium and thorium, small quantities of fissionable materials, and commercial disposal of low-level waste. The Commission has determined that the Illinois program for regulation of such material and the facilities that produce such material generally is compatible with the Commission's program for the regulation of like materials and adequate to protect the public health and safety with respect to the materials covered by the proposed amendment. However, certain standards adopted by Illinois differ from the standards adopted and enforced by the Commission for the same purpose. In

accordance with the requirements of Section 274 o of the Atomic Energy Act of 1954, the Commission evaluated those differing standards in general, without reference to a particular site, and determined that those standards are adequate for purposes of amending the Commission's agreement with Illinois. If, at some time in the future, the State seeks to apply those or other differing standards to a particular site, including the West Chicago Rare Earths Facility site, Section 274o requires the Commission to provide further notice and opportunity for a public hearing and to determine whether the State's differing standards will achieve a level of stabilization and containment of that site, and a level of protection for public health, safety and the environment from both radiological and nonradiological hazards associated with the site, which is equivalent to, or more stringent than, the level which would be achieved by any requirements adopted and enforced by the Commission for the same purpose.

The Illinois Department of Nuclear Safety will be the State agency responsible for administering the regulatory program for the extraction and the concentration of uranium and thorium from any ore processed primarily for its source material content, as well as the possession, use, transfer and disposal of the mill tailings and other wastes associated with the ore processing.

Draft Federal Register Notice

NUCLEAR REGULATORY COMMISSION

ACTION: Notice of Amended Agreement with the State of Illinois

SUMMARY: Notice is hereby given that the Honorable Kenneth M. Carr, Chairman of the United States Nuclear Regulatory Commission, and the Honorable James R. Thompson, Governor of the State of Illinois, signed an Amendment to the existing Section 274b Agreement between NRC and the State of Illinois pursuant to Section 274 of the Atomic Energy Act of 1954, as amended. The Amendment permits the State to regulate 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material.

Insert 4

The proposed Amendment to the existing Section 274b Agreement was published in the Federal Register for public comment for four consecutive weeks beginning March 28, 1990 (55 FR 11459).

The Amendment is published in accordance with the requirements of Public Law 86-373. A copy of the consolidated version of the Agreement is available at the Office of Governmental and Public Affairs, State Programs.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, State Programs, United States Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone 301-492-0326).

INSERT

The Commission has determined that the Illinois program for regulation of 11e(2) byproduct material and the facilities that produce 11e(2) byproduct material generally is compatible with the Commission's program for the regulation of like materials and adequate to protect the public health and safety with respect to the materials covered by the proposed Amendment. However, certain standards adopted by Illinois differ from the standards adopted and enforced by the Commission for the same purpose. In accordance with the requirements of Section 274 o of the Atomic Energy Act, the Commission evaluated those differing standards in general, without reference to a particular site, and determined that those standards are adequate for purposes of amending the Commission's agreement with Illinois. If, at some time in the future, the State seeks to apply those or other differing standards to a particular site, including the West Chicago Rare Earths Facility site, Section 274 o requires the Commission to provide further notice and opportunity for a public hearing and to determine whether the State's differing standards will achieve a level of stabilization and containment of that site, and a level of protection for public health, safety and the environment from both radiological and nonradiological hazards associated with the site, which is equivalent to, or more stringent than, the level which would be achieved by any requirements adopted and enforced by the Commission for the same purpose.

SUPPLEMENTARY INFORMATION:

Public Comments: In response to the FR Notice, the NRC received 166 letters with two commenters (Kerr-McGee and the State of Illinois) submitting supplemental comments. The commenters included local residents (9708 total number of signatures), businesses (20), community leaders (9), the Environmental Protection Agency, the State of Illinois, and Kerr-McGee Chemical Corporation (the only licensee in the State affected by this amendment). Of the letters received, all except Kerr-McGee's were in support of the amendment and transfer of regulatory authority for 11e.(2) byproduct material to the State of Illinois. Kerr-McGee opposed the granting of the amendment and requested that a hearing be held. A list of all commenters was provided to the Commission along with an analysis of the major comments which was prepared by the staff. All comments except for those presented by Kerr-McGee Chemical Corp. supported the proposed amendment to the Agreement and all comments were carefully considered by the Commission in its deliberations on the Illinois request. The comments are available in the Commission's Public Document Room at 2120 L Street, N.W., Washington, D.C.

and the staffs analysis of the major comments

Amendment to the Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for 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 (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 materials as defined in Sections 11c.(1) and (2) 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 Illinois is authorized under Illinois Revised Statutes, 1987, ch. 111½, par. 216b and ch. 111½; par. 241-19 to enter into this Agreement with the Commission; and,

WHEREAS, on June 1, 1987, an Agreement between the Commission and the State of Illinois became effective which provided for State assumption under State law regulatory authority over byproduct material as defined in Section 11.e(1) of the Act, source materials, special nuclear materials in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons; and,

WHEREAS, Article III of that Agreement provides that the Agreement may be amended upon application by the State and approval by the Commission, to include the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material; and,

WHEREAS, the Governor of the State of Illinois certified on _____ that the State of Illinois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and that the State of Illinois desires to assume regulatory responsibility for such materials; and,

WHEREAS, the Commission found on _____ that the program of the State for the regulation of the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material is compatible with the Commission's program for the regulation of such materials and is adequate to protect the 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 where necessary compatible; and,

WHEREAS, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to Amendment Number One to the Agreement; and,

WHEREAS, Amendment Number One to the 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 the State, acting in behalf of the State, as follows:

- 1) Article I of the Agreement is hereby amended to expand the scope of the Agreement to include the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act. As amended, Article I now reads 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 6, 7, and 8, and Section 161 of the Act with respect to the following:

- A. Byproduct material as defined in Section 11e.(1) of the Act;
- B. Source materials;
- C. Special nuclear materials in quantities not sufficient to form a critical mass; and,
- D. The land disposal of source, byproduct, and special nuclear material received from other persons.

Pursuant to Article III, and subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Amendment Number One to this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following:

E. The extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act.

- 2) Article II of the Agreement is hereby amended by inserting "A." before "This Agreement," by redesignating paragraphs A. through D. as subparagraph 1. through 4., by deleting paragraph E., relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B., relating to authorities that will be retained by the Commission. As amended, Article II now reads as follows:

ARTICLE II

- A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:
1. The construction and operation of any production or utilization facility;
 2. The export from or import into the United States of byproduct, source, or special nuclear material, or utilization facility;

3. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission; and,
4. 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 be so disposed of without a license from the Commission.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in Section 11e.(2) of the Atomic Energy 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 a disposal site for such material. Such reserved authority includes:
 - a. The authority to established 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 materials 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 the 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 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 the 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) Article IX of the Agreement is hereby amended by redesignating it Article X and by inserting a new Article IX. As amended Articles IX and X now read as follows:

ARTICLE IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which 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 the 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 which 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 State 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 June 1, 1987, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

- 4) The Agreement effective June 1, 1987 remains in effect except as modified by amendments contained in Paragraphs 1), 2), and 3) of this Amendment Number One.
- 5) This Amendment Number One to the June 1, 1987 Agreement shall become effective on _____, and shall remain in effect until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this ___ day of

_____.

For the United States Nuclear Regulatory Commission.

Chairman

Done at Springfield, Illinois, in triplicate, this ____ day of

_____.

For the State of Illinois

Governor

Dated at Rockville, MD this _____ day of _____, 1990.

For the United States Nuclear Regulatory Commission.

Carlton Kammerer, Director
State Programs
Office of Governmental and
Public Affairs