



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

October 4, 2023

Tera Patton, Director
Radiation, Toxics & Indoor Air Division
Office of Environmental Health Services
Department of Health & Human Resources
350 Capitol Street, Room 313
Charleston, WV 25301

SUBJECT: WEST VIRGINIA PROPOSED ENABLING LEGISLATION

Dear Tera Patton:

We have reviewed the revisions to the West Virginia Proposed Enabling Legislation, received by our office on August 24, 2023. This legislation was reviewed by comparison to the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-700 Handbook, "Processing an Agreement," the Council of State Governments, Suggested State Legislation, 1983, Volume 42, and policy statement "Criteria for Guidance of States and the NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (Criteria Policy Statement). We discussed our review of the legislation with you on September 28, 2023.

As a result of our review, we have five comments and one editorial comment that have been identified in the enclosure. We recommend that you address these comments and submit your revised enabling legislation for review prior to the submittal of your draft application.

If you have any questions regarding our review or the Suggested State Legislation used in the review, please contact my staff at AgreementStateRegs.Resource@nrc.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Adelaide S. Giantelli".

Signed by Giantelli, Adelaide
on 10/04/23

Adelaide S. Giantelli, Chief
State Agreement and Liaison Programs Branch
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

Enclosure: Comment Table

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West Virginia File

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OFFICE	NMSS/MSST	NMSS/MSST	OGC	NMSS/MSST
NAME	HAKhavannik	SSahle	ELicon	AGiantelli
DATE	10/02/2023	09/28/2023	09/27/2023	10/04/2023

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COMMENTS ON WEST VIRGINIA ENABLING LEGISLATION

STATE SECTION		STATE SUGGESTED LEGISLATION SECTION	SUBJECT and COMMENTS
1	Section 16-27B-1 Section 16-27B-5.(d)(1)	Section 1 Section 5	<p>Declaration of Policy and State Radiation Control Agency</p> <p>West Virginia proposed legislation Sections 16-27B-1 and 16-27B-5.(d)(1) include “public health and safety” but do not include, “and the environment”. Protection of the environment is Compatibility Category C, and therefore, this language is needed to meet the essential objectives of the program.</p> <p>West Virginia needs to revise Sections 16-27B-1 and 16-27B-5.(d)(1) to include, “and the environment”.</p>
2	Section 16-27B-3.(1)(D)	Section 4	<p>Definitions: Byproduct Material</p> <p>West Virginia proposed legislation Section 16-27B-3.(1)(D) adds, “...by being converted to technologically enhanced naturally occurring radioactive material (TENORM) through extraction,” to the definition of byproduct material. The definition for byproduct material in Section 4 of the Suggested State Legislation does not contain this addition. This definition is Compatibility Category C, and therefore, necessary to meet the essential objectives of the program. As written, the additional language appears to limit the statutory authority.</p> <p>To include TENORM in a more descriptive way, we suggest revising the text as follows, “...or the common defense and security, including conversion to technologically enhanced naturally occurring radioactive material (TENORM) through extraction, or conversion after extraction, for use for a commercial, medical, or research activity.” In the alternative, West Virginia could delete the text, “by being converted to technologically enhanced naturally occurring material (TENORM).”</p>
3	Section 16-27B-7.(a)	Section 11	<p>Surety Requirements</p> <p>West Virginia proposed legislation Section 16-27B-7.(a) includes disposal of low-level radioactive waste as part of describing licensed activities which may require adequate surety.</p> <p>Since West Virginia is not requesting authority for disposal of low-level radioactive waste, Section 16-27B-7.(a) needs to be updated to say, “[F]or licensed activities the Department may establish by rule or regulation standards and procedures...”</p>

STATE SECTION		STATE SUGGESTED LEGISLATION SECTION	SUBJECT and COMMENTS
4	Section 16-27B-7.(c)	Section 11	<p>Surety Requirements</p> <p>West Virginia proposed legislation Section 16-27B-7.(c) includes disposal of low-level radioactive waste as part of describing licensed activities which may require adequate surety.</p> <p>Since West Virginia is not requesting authority for disposal of low-level radioactive waste, Section 16-27B-7.(c) needs to be updated to say, “[F]or licensed activities when radioactive material which will require surveillance or care is likely to remain at the site after the licensed activities cease, the Department may establish by rule or regulation standards and procedures...”</p>
5	N/A	Section 17	<p>Administrative Procedure and Judicial Review</p> <p>West Virginia proposed legislation does not contain equivalent language to SSL Section 17(b) to provide opportunity for a hearing in any proceeding for the denial of an application, revocation, suspension, or modification for a license. Providing an opportunity for hearing in these instances is Compatibility Category C, and therefore, equivalent language is needed to meet the essential objectives of the program.</p> <p>West Virginia needs to include equivalent language to SSL Section 17(b).</p>

EDITORIAL COMMENT ON WEST VIRGINIA ENABLING LEGISLATION

STATE SECTION		STATE SUGGESTED LEGISLATION SECTION	SUBJECT and COMMENTS
1	Section 16-27B-7	Section 11	<p>Surety Requirements</p> <p>West Virginia proposed legislation Section 16-27B-7 does not contain an equivalent for SSL Section 11(f). SSL Section 11(f) states:</p> <p>In order to provide for the proper care and surveillance of sites subject to subsection (c) and which are not subject to Section 8 or 9, the [state] [agency on behalf of the state] may acquire by gift or transfer from another government agency or private person, any land and appurtenances necessary to fulfill the purposes of this section. Any such gift or transfer is subject to approval and acceptance by the [state] [agency].</p>