

August 7, 2025

NRC Comments dated April 2, 2025
on the Draft Wyoming Application for an Agreement
dated January 10, 2025

Wyoming's Response Comments in Red

Specific Comments

Section 4.1 – Legal Elements

1. Wyoming's proposed amended Agreement appears to be based on the model Agreement in Management Directive 5.8, "Proposed Section 274b. Agreements with States" instead of Wyoming's existing Agreement that became effective on September 30, 2018. Wyoming should base their proposed amended Agreement off their 2018 Agreement, amending it as appropriate as well as incorporating conforming language approved by the Commission in SRM-SECY-25-0010 for all future proposed Agreements. Upon the Commission's approval, the revised amended Agreement would supersede Wyoming's existing Agreement with the NRC. Enclosure 2 contains the NRC staff's markup of Wyoming's 2018 Agreement that incorporates the requested amendment and relevant conforming language.

WDEQ Response:

Wyoming incorporated the draft revised language found in Enclosure 2 for the document titled "AN AMENDED 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".

Section 4.2 – Regulatory Requirements

2. *Units of Radiation Dose*. This comment relates to comment 2 in the NRC's September 16, 2024, letter to the Wyoming Department of Environmental Quality detailing NRC's comments on Wyoming's proposed Source Materials Program regulations received by the NRC on May 24, 2024. It appears that Wyoming has taken option 2 and included 20.1004(a) and 20.1004(b) in SMP Chapter 3 Section 4(b) exclusions from IBR. However, SMP Chapter 1 Section 6(c) language still references 20.1004 as being incorporated by reference. Please explain how these changes addressed our comment, since 20.1004 is Compatibility Category A.

WDEQ Response:

Wyoming has corrected this error.

10 CFR 20.1004(a) is not incorporated by reference, but the content is contained in SMP Chapter 1, Section 6(b).

10 CFR 20.1004(b) and 20.1004(c) are incorporated by reference in SMP Chapter 3 Section 4(a).

Previous Chapter 3 Section 4(g)(iii) has been deleted, as it is no longer necessary because 10 CFR 20.1004(b) is incorporated by reference in Chapter 3 Section 4(a).

“(iii) In 10 C.F.R. 20.1004(c), references to “20.1004(b) means Chapter 1, Section 6 of these rules.”

Any rule changes are currently going through the rule-making process.

Not related to this comment, but please also note:

- IBR in SMP Rule Chapter 3, Section 4(a) full adoption was revised to exclude 20.2401 by changing reference to Sections 20.1001 through 20.2402 (revising 20.2402 to 20.2400)
- The Wyoming AG office requested that language throughout the SMP rules be changes as follows:
 - All statements referring to “these rules and regulations” or “these regulations” be changed to “these rules.”

3. *Reconciliation of Incorporation by Reference.* This comment relates to comment 8 in the NRC’s September 16, 2024, letter to the Wyoming Department of Environmental Quality. Comment 8 stated that the NRC had reviewed the parts of 10 CFR that Wyoming proposed to incorporate by reference and that additional reconciliation language, specifically eleven paragraphs needed to be added by Wyoming to Chapter 3, Section 4. Wyoming implemented all of the changes outlined in comment 8, with the exception of the change listed in Comment 8, number 11. Therefore, Wyoming needs to add the new paragraph listed in Comment 8, no. 11 which stated that the following paragraph needed to be added to Chapter 3, Section 4. “References regarding Parts 30, 50, 52, 54, 60, 61, 63, and 72 and any section within those parts, are not incorporated by reference,” Wyoming needs to make this change to reconcile differences created due to incorporation by reference.

WDEQ Response:

The requested language is already contained within Chapter 3 Section 4(e), which reads “Any reference in the federal rules to 10 C.F.R. Parts 30, 50, 52, 54, 60, 63, 72, and 76 are not adopted under the incorporation by reference of 10 C.F.R. Part 20.” Therefore, no change was made in response to this comment.

4. *Reconciliation of Incorporation by Reference.* Comment 17 in the NRC’s September 16, 2024 letter to the Wyoming Department of Environmental Health stated that Wyoming needed to reconcile differences due to incorporation by reference of 10 CFR 40.36 (d)(1)(ii) and (iii), 40.36(d)(2)(i)-(viii), and 40.36(f)(1)-(3). Wyoming is missing the reference to 40.36(f)(1)-(3) in Chapter 6, Section 6(e). Therefore, Wyoming needs to address comment 17 by revising Chapter 6, Section 6(e) by

replacing “and 40.36(d)(2)(i)-(viii).” with “40.36(d)(2)(i)-(viii) and 40.36(f)((1)-(3)”.

WDEQ Response:

Comment 17 was addressed by adding section 6(f), to SMP Rule Chapter 6, which states:

(f) To reconcile differences due to incorporation of 10 C.F.R. 40.36(d)(iii) by reference in paragraph (e), the following substitution shall be made:

(i) Where the words “paragraph (e) of this section” are used, substitute “Section 5 of this Chapter”.

Section 4.3 - Licensing

No Comments

Section 4.4 - Inspection

5. In Appendix A, sections 3.0(ii) and Table 1 of the “Source Material Program Inspection Procedures” and section 6.3.2 of the “Source Material Program, Inspection Procedures Technical Quality of Inspections and Inspection Reports,” contain outdated references. Specifically, MC 2641, IP 88035, and IP 88064 have been rescinded. Wyoming should incorporate IMC 2602, IP 89035, IP 89045 and IP 89050 for the SMURP and IP 89025 and IP 89010 for the URP.

WDEQ Response:

Revisions were made to Inspection Procedures to **remove** these rescinded IP’s: MC 2641, Deleted NRC Insp MC 2641, ISL Facilities Insp Program, 1997/09/02 IP 88035, Deleted Radioactive Waste Processing Handling, Storage, Transportation, Obsolete in CN 24-032, 2014/02/07 IP 88064, Deleted, but couldn’t find this procedure title in Adams or on the NRC website

The following IPs were **added** to **SMURP** IPs:

IMC 2602, Decommissioning Inspection Program for Fuel Cycle Facilities and Materials Licensees, 12/15/2022

IP 89035, Radioactive Waste Management and Transportation at Uranium Recovery and 11e.(2) Byproduct Material Facilities, 10/8/21

IP 89045, Effluent Control and Environmental Protection at Uranium Recovery and 11e.(2) Byproduct Material Facilities, 10/8/21

IP 89050, Emergency Preparedness and Fire Protection at Uranium Recovery and 11e.(2) Byproduct Material Facilities, 10/8/21

Added to **URP** IPs:

IP 89025, Assessment of Dryer and Yellowcake Packaging Operations, 7/26/24

IP 89010, Disposal Cell Construction at Uranium Recovery and 11e.(2) Byproduct Material Facilities, 10/8/21
Could not find 89010 or URP IPs

6. Appendix A, "Source Material Program Inspection Procedures," does not establish a timeliness requirement for issuance of inspection reports. To be compatible with the NRC, please update the procedure to include a timeliness requirement that inspection reports be issued at least 30-days from the exit date or 45-days for a team inspection.

WDEQ Response:

There was no change made to the wording regarding the establishment of timeliness for inspection reports in Section 15 of the Source Material Inspection Procedures. This is consistent with other compatible Agreement States.

Section 4.5 - Enforcement

7. Section 4.5.2 of the application states that escalated enforcement should be used for "serious or repeated violations," and that escalated enforcement actions may include administrative or civil monetary penalties, as authorized by Wyo. Stat. § 35-11-901(a), or the modification, suspension, or revocation of a license, as authorized by Wyo. Stat. § 35-11-109(a)(xiii), -409, -412, and -2003. However, civil penalties and revocation or suspension of licenses, as authorized under those statutory sections, are not included as possible escalated actions in the procedures in Appendix A, Section 3.0. Rather, they are included as routine enforcement actions in Appendix A, Section 2.0 (civil penalties authorized under § 35-11-901(a) are included in Appendix A, Section 2.2, and orders to suspend or revoke a license are included in Appendix A, Section 2.3).

Escalated civil penalties are included in Appendix A, Section 3.2, which states that a person who "willfully and knowingly" violates the Wyoming Environmental Quality Act, rules, regulations, etc., "is subject to higher penalties not to exceed \$25,000.00 per day per violation." However, the statutory authority for the \$25,000 amount is Wyo. Stat. § 35-11-901(j), which, according to Section 4.5.2(c) of the application, is the authority for "referral for criminal prosecution." The language of § 35-11-901(j), which states in part that a person who knowingly and willfully commits a violation "shall be fined not more than twenty-five thousand dollars (\$25,000.00) per day of violation or imprisoned for not more than one (1) year, or both," indicates that this fine is intended to be a criminal sanction. Therefore, it does not appear that the penalty in Section 3.2 can be considered an escalated civil penalty. Furthermore, even if the \$25,000 fine could be considered a civil penalty, it would only apply to knowing and willful violations and thus could not be used for "serious and repeated violations" that are not knowing and willful.

The other escalated enforcement actions described in SMURP's enforcement

procedures are emergency orders (Section 3.1) and criminal sanctions (Section 3.3). As described in Section 3.1, emergency orders are authorized only in limited situations (i.e., an emergency where immediate action is necessary to protect health and safety) and criminal sanctions require referral for prosecution. Thus, SMURP's enforcement procedures appear to contain no escalated enforcement options for serious or repeated violations that are neither knowing and willful nor emergency situations. Please update the enforcement procedures to address serious or repeated violations that are neither knowing and willful nor emergency situations.

WDEQ Response:

SMURP's enforcement penalties mirror the Wyoming Environmental Quality Act Statute § 35-11-901 which prescribes caps on fines going from an amount per day up to a capped amount. The "escalation" could come from an initial lower fine amount which could be increased up to the capped amount, and the penalties would be at the discretion of the Administrator, Attorney General, and the Director.

Escalated enforcement can include civil penalties and revocation or suspension of licenses. Section 3 has been updated to include this information.

Also, please note that 35-11-901(j) states:

"...For a subsequent conviction for a violation of this act, the person shall be subject to a fine of not more than fifty thousand dollars (\$50,000.00) per day of violation, imprisonment for not more than two (2) years, or both. For multiple violations penalties may be assessed up to the maximum amount specified in this subsection for each day of each separate violation."

In Section 3.2 titled Escalated Civil Penalties, the title has been revised to 3.2 Civil Penalties

8. Appendix A, Section 1.4, references NUREG-1600. The NRC stopped using the designation "NUREG-1600" for the Enforcement Policy in 2005. Accordingly, the reference to NUREG-1600 needs to be changed to "NRC Enforcement Policy." Also, consider providing a link to the most recent version of the NRC Enforcement Policy, which is available on the NRC website at <https://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

WDEQ Response:

Changed NUREG-1600 to NRC Enforcement Policy

Added website link to Section 1.4

9. Appendix A, Section 2.1.3, "Letters of Conference," requires several clarifications. First, despite the title, both "letters of conference" and "letters of violation" are described, and it is unclear what the difference is between the two. Second, the letter

of conference as described in the first sentence sounds similar to the inspection letter described in Section 2.1.2. What is the difference? Third, the term “letter of conference” suggests that it would be used to ask a licensee to participate in a conference. Is that the case? Fourth, in the final sentence of Section 2.1.3, it is unclear whether a letter of violation is used only before issuing and notice of violation (NOV) and Order together, as opposed to issuing an NOV alone (without an order). Please revise Section 2.1.3, “Letters of Conference,” to provide clarity of the different types of letters and their uses.

WDEQ Response:

9.1: Appendix A, Section 2.1.3 has been changed to “Pre-Enforcement Letter.” The Wyoming Land Quality Division and SMURP can use pre-enforcement letters prior to issuing NOVs. “Letters of Conference” and “letters of violation” are outdated terms that are no longer used in the SMURP and have been changed to pre-enforcement letters.

9.2: “Letters of Conference” has been replaced with pre-enforcement letters. Also, Section 2.1.2 has been changed to “Inspection Reports.” Pre-enforcement letters are different than inspection reports. Pre-enforcement letters can be issued with an inspection. For example, if an operation has not submitted required reports in a timely manner, or is not complying with the licensing requirements, the SMURP can issue a pre-enforcement letter to the licensee to notify them that if the issues are not resolved within a certain timeframe, a NOV will be issued.

9.3: The language in this section has been updated to provide clarity.

9.4: The language in this section has been updated to provide clarity.

10. In Appendix A, Section 3.0, the first sentence states that escalated enforcement action may be taken for serious or repeated violations but does not state whether escalated actions would apply to willful violations, such as deliberate misconduct as defined in Chapter 1, Section 9 of the Source Material Program Rules (Appendix A to Subsection 4.2). Please clarify the procedure to make this distinction.

WDEQ Response: Language was added to the first sentence to include willful violations in the list of violations that may result in escalated enforcement. Added 35-11-901(a) and (j) to Section 3.0 regarding increasing maximum limits per day and criminal penalties.

11. Appendix A, Section 3.0, refers to a “notice of escalated enforcement.” What does that notice include, and how is it different from a letter of violation or a NOV? Please revise Section 3.0 to clarify the different types of notices.

WDEQ Response: A notice of escalated enforcement is a letter to the entity responsible for the alleged violation, notifying them that the DEQ is pursuing escalated enforcement.

12. Appendix A, Section 3.1, states that an Emergency Order may be issued “for conditions which pose immediate and substantial danger to human or animal health or safety, which require immediate action.” Appendix A, Section 5.0, end of paragraph 2, states that an Emergency Order may be issued for “violations that have immediate risk to health and safety of the public, worker(s), or the environment.” These two descriptions are not consistent. It appears that the standard in Section 3.1 tracks more

closely to the statutory language in Wyo. Stat. § 35-11-115(a). Please revise Section 3.1 or Section 5.0 to make the descriptions consistent.

WDEQ Response: Section 5 has been updated to match the language in section 3.1.

13. In Appendix A, Section 5.0, the description of the enforcement process and accompanying flowchart (Figure 1) are incomplete or unclear in several respects. First, Section 5.0 does not identify or discuss the criteria that are used to decide whether a violation is determined to have low health and safety significance versus “significant” risk that would warrant an NOV, or who makes that determination. Second, Section 5.0 does not identify or discuss the criteria used to decide whether an order is necessary, other than stating that the LQD Administrator and WDEQ Director make that determination “after reviewing the violation.” Third, Section 5.0 does not describe the process that occurs after an NOV is issued, and the flowchart does not clearly illustrate the process. Questions include the following: (1) are all NOVs, including those where no civil penalty is being considered, subject to either litigation or settlement discussions/agreement, as the flowchart suggests? (2) what is the process for deciding whether a civil penalty is warranted—what criteria are used to make this determination? (3) if a civil penalty is deemed appropriate, who decides on the amount, when is that decision made, and what is the process for imposing the penalty? (4) in the litigation route, does SMURP propose a civil penalty amount and seek an imposition order from the court, or does the court have sole power to propose and decide on the civil penalty amount? Please revise Section 5.0 and Figure 1 to address the comment outlined above.

WDEQ Response: Section 5 has been updated to clarify that the significance of the violation is determined by the SMURP manager as follows. Potential or existing violations are typically documented as Observations, Findings or Violations. Observations are the lowest severity level, Findings are a slightly higher severity level, and Violations are the highest severity level, resulting in the issuance of a Notice of Violation (NOV). When determining the severity of the compliance concern, the following are taken into consideration:

- actual safety consequences
- potential safety consequences
- potential for impacting the SMURP’s ability to perform its regulatory function, and
- any willful aspects of the compliance concern.

When assessing the severity of potential or existing violations the SMURP manager will consider the above items, as well as precedent set by both the NRC and SMURP when addressing similar concerns.

In response to question (1) above, yes, all NOVs, including those where no civil penalty

is being considered, subject to either litigation or settlement discussions/agreement.

(2) In determining if a civil penalty is warranted, the following are considered:

- the severity of the violation
- past penalties imposed for similar violations
- whether the entity gained any financial benefit from noncompliance
- if the violation is a repeat violation.

(3) If the violation is handled through a settlement agreement, the DEQ determines the monetary penalty amount through negotiations with the company. If the Violation goes to litigation, the court will decide civil penalty amount, based on recommendations from the WDEQ and the courts own judgement. If the violation is handled through a settlement agreement, the company agrees to pay the penalty. If the penalty is not paid, the issue will be litigated. If the violation is handled through litigation the civil penalty is imposed through a court ordered judgement.

(4) in the litigation route, the WDEQ will propose a civil penalty amount, but the court has sole power to decide on the civil penalty amount.

14. In Appendix A, Section 5.0, the last paragraph states as follows: “Each NOV that is issued is tailored to the individual violation and is issued by both the LQD Administrator and the WDEQ Director. The NRC process is similar in the fact that each violation has to be evaluated to determine Severity Level I-IV.” The NRC has a process for assigning severity levels that includes specific criteria and examples. As noted in the previous comment (Comment 10), the WY process for handling violations, as described in Section 5.0, does not include such a process; rather, the “tailoring” seems to be largely left to the discretion of staff and/or the WDEQ Director and LQD Administrator. Therefore, the statement about similarity to the NRC process seems unsupported. Please either strike the sentence about the NRC process being similar or explain how the WY process is similar.

WDEQ Response: Section 5 has been updated to clarify how severity levels are determined.

Section 4.6 - Technical Staffing and Training

15. Table 1 and subsection 4.6.3 will need to be updated with the final names for all positions. Please include the names for each position.

WDEQ Response:

Wyoming updated Table 1 and subsection 4.6.3, adding Brandi O’Brien into the Land Quality Division Administrator spot and added Charlee Boger to SMURP Program Manager.

16. Table 5, under the table header for “Type of Request” there should be separate line items for “Amendment” and “License Renewal.”

WDEQ Response:

Comment declined due to the structure of Wyoming’s budget line items.

17. For the final application, Wyoming will need to submit the completed qualification cards for SMP health physicists to demonstrate the individuals have met the qualification requirements.

WDEQ Response:

When completed, Wyoming will send in qualification cards to demonstrate that Monte and Carol have completed the qualification requirements.

Section 4.7 - Events and Allegations

18. Appendix A and Appendix B state “For the purposes of this procedure, contaminated waste will be referred to as to as byproduct material.” If Wyoming chooses to keep this statement, please provide additional context that elaborates and provides the rationale for this sentence. The statement should clearly differentiate between byproduct material produced as waste from uranium recovery and source material waste during the rare earth processing.

WDEQ Response:

The statement “For the purposes of this procedure, contaminated waste will be referred to as to as byproduct material” has been removed.

19. In Appendix A, section 2.3(a), fourth sentence, replace the text “Wyoming’s SMURP is responsible for maintaining radiological regulations for source and byproduct materials, and small quantities of special nuclear material” with “Wyoming has only assumed regulatory authority over source material involved in uranium or thorium recovery or milling and the associated 11e.(2) byproduct material including source material recovered from any other mineral resources processed primarily for purposes other than obtaining the source material content.”

WDEQ Response:

Replaced with the above language to clarify what the Wyoming Agreement covers.

20. Appendix A, section 3.19 states that allegation refresher training should be provided at least every three years. The NRC Allegations Manual provides that Allegation refresher training is provided annually. To be compatible, Wyoming should reduce the training frequency to at least annually. Please update section 3.9 with the reduced training frequency.

WDEQ Response:

Removed “every three years” from the paragraph and added “at least once every year”.

Comments for Consideration

Generic Comments

1. Consider using consistent naming for documents. For instance, In Wyoming draft application section 4.7, the following examples were found:
 - a. “Event Reporting Procedural Manual” and “Event Reporting Manual”

WDEQ Response:

Revised all occurrences with Event Reporting Procedural Manual

- b. “Allegation Casework Review Summary Sheet” and “Allegation Report Form”

WDEQ Response:

Updated Attachment A to the correct name: Incident Casework Review Summary Sheet. These are two separate attachments, Attachment B remains the same.

2. Doublecheck the section and paragraph numbering and ensure the table of contents is updated. (DO THIS AT THE END)

WDEQ Response:

All sections, paragraphs, dates and table of contents have been updated to reflect the new content.

Section 4.2 – Regulatory Requirements

3. *Definitions Relating to Pre-Licensing Construction.* Wyoming should consider deleting the definition of “Commencement of Construction” in Chapter 1, Section 5(v) and Chapter 4, Section 6, “Pre-licensing Construction.” As noted in editorial comment number one in the NRC’s September 16, 2024, letter to the Wyoming Department of Environmental Health, the section on “Pre-licensing Construction” and “Commencement of Construction” are applicable only to uranium recovery activities. Wyoming already removed the definition of “Construction” consistent with NRC’s previous editorial comment. Similarly, Wyoming should consider deleting the definition of “Commencement of Construction” and Chapter 4, Section 6, “Pre-licensing Construction.”

WDEQ Response:

Wyoming is opting to keep the Commencement of Construction and Pre-licensing Construction definitions in Chapters 1 and 4, respectively.

4. Wyoming Chapter 1, Section 10 on “Exemptions” includes an (a), when there are no additional subparts Chapter 1, Section 10. Previously, Wyoming deleted Sections 10(b) and 10(c) in Wyoming Chapter 1 to avoid duplications. Wyoming should delete the “(a)” in Chapter 1, Section 10 because there is no need for (a) if there are no longer subparts (b) and (c) in the same section.

WDEQ Response:

Wyoming removed the orphan (a) sections from Chapters 1, 4, and 6-9.

5. *Reconciliation of Incorporation by Reference.* Comment 9 in the NRC’s September 16, 2024, letter to the Wyoming Department of Environmental Quality, stated Wyoming must add new paragraphs in Wyoming Chapter 4, Section 3 to reconcile differences due to incorporation of 10 CFR Part 40. Comment 9 lists eleven substitutions and clarifications that Wyoming needed to add to Chapter 4, Section 9. Wyoming implemented all the changes in comment 9, with the exception of some of the language listed in the paragraphs to be added in numbers 6 and 11 of comment 9. Comment 9, number 6 stated Wyoming must add the following to reconcile differences due to incorporation of 10 CFR Part 40, which is currently listed in Chapter 4, Section 3(d)(vi)”

“In 40.22(b)(3), references to “§§ 40.1 through 40.10, 40.41(a) through (e), 40.46, 40.51, 40.56, 40.60 through 40.63, 40.71, and 40.81” is substituted with “10 CFR 40.41(a)-(c), 40.51, and 40.61; Chapter 2 Section 3; and Chapter 4 Sections 2(b), 4, 8(e), 10(c), and 14.”

Wyoming used some of this language but referenced “Chapter 1, Section 9” rather than “Chapter 2, Section 3.” Therefore, Wyoming needs to replace “Chapter 1, Section 9” with Chapter 2, Section 3.” In addition, Wyoming must also replace the references to Chapter 4, Sections “7(e), 9(c), and 13” with “4, 8(e), 10(c), and 14.”

Comment 9, number 10 also stated that Wyoming should add “In 40.54(a) a reference to “§ 40.32” means “Section 8 of this Chapter.” This language is included by Wyoming in Chapter 4, Section 3(d)(x), but Wyoming cites “Section 7” rather than “Section 8.” However, § 40.32 contains specific requirements for a part 40 license. Wyoming Chapter 8 discusses risk informed, performance-based licensing and inspection. Should this reference be to Wyoming Chapter 4 which covers Wyoming’s licensing requirements?

Wyoming needs to confirm whether Section 8 is the correct reference.

WDEQ Response:

Per NRC comment 3, in the letter dated 09/16/2024, Wyoming deleted Chapter 4 section 4, which had been a section on deliberate misconduct, and left deliberate misconduct housed in Chapter 1, Section 9. Because of the removal of Chapter 4, Section 4, the Section numbers changed in the remainder of Chapter 4. The NRC comments on the Draft Application have not accounted for this numbering change. Chapter 1, Section 9

was intentionally referenced, as this is now where Deliberate Misconduct is addressed. Wyoming also added Chapter 2 Section 4, as it pertains to violations (40.81). Chapter 4 Section 3(d)(vi) now states:

“In 10 C.F.R. 40.22(b)(3), references to “§§ 40.1 through 40.10, 40.41(a) through (e), 40.46, 40.51, 40.56, 40.60 through 40.63, 40.71, and 40.81” is substituted with “10 C.F.R. 40.41(a) – (c), 40.51, and 40.61; Chapter 1, Section 9; Chapter 2, Sections 3 and 4; and Chapter 4 Sections 2(b), 7(e), 9(c), and 13.”

SMP Chapter 4, Section 7, General Requirements for Issuance of Specific Licenses, is intentionally referenced in Chapter 4 Section 3(d)(x). NRC’s initial comment, in letter dated 09/16/2024, was based on a numbering system that was adjusted due to the removal of deliberate misconduct from Chapter 4 (see above). So, NRC’s original comment was asking Wyoming to reference the section for “General Requirements for Issuance of Specific Licenses.” At the time this comment was generated, that section was Chapter 4 Section 8. This comment had not been adjusted for the rules submitted in the Draft Application.

6. *Reconciliation of Incorporation by Reference.* Comment 10 in the NRC’s September 16, 2024, letter to the Wyoming Department of Environmental Quality stated that Wyoming must add new paragraphs to Wyoming Chapter 4, Section 3 to reconcile differences due to incorporation of 10 CFR Part 150.20 by reference in paragraph (c). Specifically, comment 10, number one stated that Wyoming must add the following in Chapter 4, Section 3(e) to reconcile the differences: “Where the words” “non-agreement states”, “areas of exclusive federal jurisdiction within agreement states”, or “offshore waters” are used in subsections (a)(1)(i), (ii), (iii), (b), (b)(3), and (b)(4), substitute the words “the State of Wyoming.” Wyoming is missing “iiii” as it relates to reconciling this difference due to incorporation of 10 CFR Part 150.20 by reference. Wyoming must include the reference to (a)(1)(iii) to reconcile this difference.

Comment 10, number 4 also stated that Wyoming needs to add the phrase “and applications filed in” after the phrase “Article 20 of the Environmental Quality Act” in Wyoming Chapter 4 Section 3(d)((vii). Wyoming needs to make this change to reconcile differences created due to incorporation by reference of 10 CFR 150.20.

WDEQ Response:

Both revisions were made to Chapter 4, Section 3 – added missing “iii”, and added “and applications filed in” after Article 20.

7. Wyoming Chapter 6, Section 7(c)(i) concerning “Financial Assurance Recordkeeping” includes a typo in the citation. The citation to “10 CFR 40,41(b)” includes a comma. Wyoming should correct the citation to “10 CFR 40.41(b)” by removing the comma.

WDEQ Response:

Corrected the comma [40.41 to 40.41] to a period in Chapter 6, Section 7(c)(i) to “40.41”.

8. Comment 15 in the NRC’s September 16, 2024, letter to the Wyoming Department of Environmental Quality stated that the NRC should add the following statement to Chapter 5, Section 3: “The statement required by 10 CFR 19.13 is revised to ‘This report is furnished to you under the provisions of Chapter 5 of Wyoming’s Rare Earth Program. You should preserve this report for further reference.’” Wyoming included this provision in Chapter 5, Section 3(g)(i), however, Wyoming uses the singular form of “provision.” Wyoming needs to replace “provision” with “provisions.”

WDEQ Response:

Revised “provision” to “provisions” in Chapter 5, Section 3 in Amendment application. Also revised “provision” to “provisions” in SMP Rules Ch. 5, Section 1.

Section 4.3 – Licensing

9. Appendix A includes NUREG-1556, Volume 12, Revision 1, “Program Specific Guidance about Possession Licenses for Manufacturing and Distribution,” as a reference document for evaluation of licensing actions. Wyoming should consider also including NUREG-1556, Volume 18, “Program Specific Guidance About Service Provider Licenses” and NUREG-1556, Volume 16, “Program Specific Guidance About Licenses Authorizing Distribution to General Licenses” as those documents may be useful for dealing with emergent technology associated with uranium and thorium ores.

Additionally, Wyoming should consider referencing Regulatory Guide 4.14, “Effluent and Environmental Monitoring for Uranium Mill Sites,” as it provides some useful information associated with the establishment of a baseline pre-operational background determination for airborne particulate, radon and direct gamma associated with uranium and thorium ores.

WDEQ Response:

Added 1556 Volumes 16, 18, and RG 4.14 to 1.0 Introduction section of references on page 458 of Amendment.

10. In Appendix A, sections 3.9 and 3.10, Wyoming should consider establishing timeliness goals for processing license amendments and renewals.

WDEQ Response:

Wyoming has internal goals for timeliness of reviews but has opted not to include those goals in this document.

Section 4.4 – Inspection

11. In Appendix A, the following sections in the “Source Material Program Inspection Procedures” reference NRC regulations and should be replaced with the applicable Wyoming regulation:

- a. Section 12(c)(H)
- b. Section 12(d)
- c. Section 12(f)(ii) and (vii)
- d. Section 12(g)(i)(j)
- e. Section 12(j)(i)
- f. Section 13(c)
- g. Table 1, Inspection

WDEQ Response:

- a. Added SMP Rules Ch. 5, Section 4 to Section 12(c)(H) reference 10 CFR Part 19.13(b)
- b. Added SMP Rules Ch. 3, Section 4 to Section 12(d) 10 CFR Part 20 reference
- c. Added SMP Rules, Ch. 3, Section 4 to Section 12(f)(ii) and (vii) 10 CFR Part 20.1301 and 10 CFR Part 20 references
- d. Added SMP Rules, Ch. 3, Sec. 4 to Section 12(g)(i)(j) 10 CFR Part 40 reference
- e. Added SMP Rules, Ch. 1, Sec. 11 to Section 12(j)(i) 10 CFR Part 20 reference Section 13(c)
- f. SMP Chapter Rules are already in Table 1 Inspection Guidelines under Column 3 titled Regulations, Procedures, Guidance (“and SMP” Rules was added to Column 3)

Section 4.5 – Enforcement

12. Appendix A, Section 1.5 – Please identify the specific section of SMURP rules and regulations where relevant definitions can be found.

WDEQ Response:

The definitions referred to in this section are for the Enforcement Procedure and are already referenced in the Wyoming Environmental Quality Act, Wyoming Statute §§ 35-11-101 *et seq.*

13. Appendix A, Sections 2.0 and 3.0 – Section 2.0 states that the manner in which a violation is dispositioned “should account for” the seriousness and circumstances. If dispositioning violations accounts for seriousness and circumstances in all cases, then use “will account for” or “accounts for” instead of “should account for.” Similarly, Section 3.0 states that notices of escalated enforcement “should be” signed by the Administrator and Director and “should be” reviewed by the Attorney General’s office. If notices of escalated enforcement are signed by the Administrator and Director in all cases and reviewed by the Attorney General in all cases, then use “are” instead of “should be.”

WDEQ Response:

The language has been updated to include definitive statements.

14. In Appendix A, Section 2.1.3, the first part of the last sentence states that a letter of violation is “generally utilized prior to a Notice of Violation and Order,” while the second part says a letter of violation “may be used prior to the issuance of a Notice of Violation and Order or escalated enforcement.” The first part of the sentence seems unnecessary. Consider revising.

WDEQ Response:

Removed the first half of the sentence, per the NRC comment.

15. Appendix A, Sections 2.1.7, 2.2, 3.2, and 3.3, which all contain this language or similar: “...the Wyoming Environmental Quality Act, rule, regulation, standard, or permit...” As written, it is not clear which rules, regulations, standards, etc. are being referred to. For clarity, and for consistency with the relevant statutory provisions, consider revising to: “...the Wyoming Environmental Quality Act or any rule, regulation, standard, or permit adopted or issued thereunder...”

WDEQ Response:

Enforcement Procedures are referenced in the definitions section

16. In Appendix A, Section 2.2, for clarity and to distinguish from monetary penalties that are authorized as criminal sanctions, change the title of this section to “Civil Monetary Penalties and Injunctions” and add “civil monetary” before the first use of “penalties” in the text (end of first sentence).

WDEQ Response:

Changed the title of the section and added the civil monetary in the suggested place.

Section 4.6 - Technical Staffing and Training

17. In section 4.6.2, Appendix B, section 2.0, which describes the training objectives for qualification, consider adding language that inspector competency and proficiency will determine readiness for completion of the qualification.

WDEQ Response:

Added in, “inspector competency and proficiency will determine readiness for the completion of each qualification.”

18. In section 4.6.2, Appendix B, section 8.0, consider renaming the “URP Tracker” to the “SMURP Tracker.”

WDEQ Response:

Changed URP tracker to SMURP tracker in section 4.6.2, Appendix B, section 8.0 and renamed the folder in teams.

19. In Appendix B, URP Qualification Card 4, “NRC Regulations and History,” contains NRC regulations (i.e., 10 CFR 19, 20, 40, and 71) that are incorporated into Wyoming’s SMP and URP regulations. Since the applicable portions of these requirements are reviewed under URP Qualification Card 2 “Wyoming State Statutes, Rules, and Regulations,” they should not be duplicated. Please delete the NRC regulations from the qualification card.

WDEQ Response:

Wyoming prefers to KEEP the CFR duplication as these CFRs are incorporated by reference and therefore will need to be read either way and relocated NUREGs, from SMP Qual Card 4 to URP Qual Card 4

20. In Appendix B, SMP Qualification Card 4, “Relevant NRC Regulations and Documents” contains NRC regulations and guidance that are not applicable to the SMP. Specifically, 10 CFR 21, 30, 37, and 75 are not relevant to Wyoming’s Agreement and should not be included in the Qualification Card. Additionally, the NUREG 1620 and 2126 are involving uranium milling and not specific to the SMP and should be moved to the URP Qualification Cards. Please delete the NRC regulations and NUREGs from the qualification card.

WDEQ Response:

Remove CFRs that were not applicable to SMP and relocated NUREGs, from SMP Qual Card 4 to URP Qual Card 4

21. In section 4.6.2, Appendix A “Job Content Questionnaire,” consider updating as follows:
- a. Update the “Supervisor Name” in the final application as necessary..-
 - b. Under “Purpose”, 3rd sentence, “The new source material program’s purpose.....content”, should that be updated to reflect our updated revised mission?
 - c. Under “Essential Duties”, under “Description” for “Duty 1” 3rd line, delete “the” before “developed”.
 - d. Under “Supervisory Responsibilities”, “Work Direction” can the “yes” statements and tables be deleted?
 - e. Under “Budgetary Responsibility”, delete “budget amount.....responsible” and the amounts specified.
 - f. Under “Challenges”, 1st paragraph, delete “d” from

WDEQ Response:

Replaced with Job description as there was no way to update the Job Content Questionnaire (JCQ) in the desired way. JCQ was changed to Job Description.

“Described”. Section 4.7 - Events and Allegations

22. In Appendix A, section 2.1 and 2.4(b), which deals with Event Reporting, remove the statement “Allegation reports should be recorded on the allegation form provided in Attachment B.”

WDEQ Response:

Removed the requested statement as we note in attachment B further in.

23. In Appendix A, section 2.3(b) replace “10 CFR Part 20.2202” with the applicable Wyoming URP/SMP rule.

WDEQ Response:

Updated to include URP/SMP Chapters 3, Section 4(a)

24. In Appendix A, section 2.5(a) and (b) replace references to 10 CFR parts to the applicable Wyoming URP/SMP rule and in paragraph (a)(iv) replace the mention of “NRC” with “Wyoming.”

WDEQ Response:

Revised to mention Wyoming SMURP instead of NRC; and the CFR references also include a Wyoming URP/SMP rule reference equivalent.

25. In Appendix A, section 2.5(a)(vi) states “[I]f an inspector is not dispatched immediately, the SMURP should consider conducting a special inspection.” This appears to contradict section 2.3(b)(1)(i) which states, “[E]valuate the need to dispatch a SMURP inspector to conduct a special inspection of the incident site, if necessary. If an inspector is not dispatched immediately, determine whether the incident requires inspection attention before the next routine inspection, based on an evaluation of its safety significance.” Please revise these paragraphs to be consistent.

WDEQ Response: Revised the language to make it consistent. Added language to 2.3 (b)(i) stating, “Determine whether a special inspection is necessary before the next routine inspection.” Also, in 2.5(vi) added a note stating “If an inspector is not dispatched immediately, the SMURP will determine whether conducting a special inspection is necessary before the next routine inspection.”

26. Appendix A, section 2.15(a) replace “10 CFR Part 20” with the applicable Wyoming URP/SMP rule.

WDEQ Response:

Updated to include URP/SMP Chapters 3, Section 4

27. In Appendix A, section 3.11(a)(i) references Section 3.19 to enter an allegation into the State database. However, Section 3.19 discusses training, and the correct reference appears be to Section 3.20 “Allegation Tracking and Follow Through.”

WDEQ Response:

Replaced with the correct reference to 3.20.

28. Wyoming draft application section 4.7, Appendix A, in section 3.11(c), "Storage of Official Agency Allegation Files and Document," discusses the multiple digital storage locations for allegation files. It is unclear what the purpose of having multiple databases and Wyoming should consider the impact on the duplication of efforts and possibility of sensitive or security-related information may be accessed by individuals without the appropriate authorization.

WDEQ Response:

The purpose of having multiple databases is to meet the goals for, and work within the existing systems for, multiple DEQ Divisions. The WDEQ spills and complaints website is managed by WDEQ Division Services, and allegations and complaints must be included here to meet WDEQ Division Services' needs. MIDAS is a Land Quality Division specific database used to store records specific to the Land Quality Division.

29. In Appendix A, section 3.12(a), "Acknowledgement Letter," states, "[F]or sensitive, security-related concerns, the acknowledgement letter will reiterate the concern(s) raised...." Wyoming should provide clarity that sensitive, security-related information would not be included in the acknowledgement letter.

WDEQ Response:

Added a sentence saying that sensitive, security-related information will not be included in the acknowledgement letter.

30. In Appendix A, section 3.20(ix) replace "resident inspectors" with "SMURP inspectors."

WDEQ Response:

Replaced resident inspectors with "SMURP inspectors."

31. In Appendix A, Attachment C, the 7th bullet listed under the definition of Allegation, states "Concerns related to Agreement State licensee activities when the concerned individual agrees to have his or her concerns and identity provided to the Agreement State." This bullet should be deleted as it is not applicable to Wyoming. Additionally, consider adding a new bullet stating, "Matters reported to NRC by Wyoming resulting from an SMURP inspection."

WDEQ Response:

Removed the above-mentioned bullet and added in the new bullet with NRC mentioned language.

32. In Appendix A, Attachment C, the definition of Allegation, review the footnote for clarity as it appears to discuss examples of what is considered an allegation and would be better characterized in the definition of allegation. Specifically, the last two

sentences state “An individual who or an organization that submits an allegation to SMURP or NRC or that provides information in a public forum that is recognized as an allegation. Anonymous concerns are accepted.”

WDEQ Response:

Updated the definition of allegation to use the bulleted footnote’s description instead.

33. In Appendix A, Attachment C, add definitions for “Alleger” and “Concerned Individual.” Wyoming may also consider the consistent use of either “Alleger” or “Concerned Individual” to avoid confusion.

WDEQ Response:

Added in *alleger* and *concerned individual* and the definitions.

34. In Appendix B, section 1.0, the date for Procedure SA-300, Reporting Material Events, and Appendix-Handbook on Nuclear Material Event Reporting in the Agreement States, Final Report should be December 2024 and not August 2024.

WDEQ Response:

Updated to correct date: December 2024.

35. In Appendix B, section 1.3 references to NRC reporting requirements instead of Wyoming URP/SMP rules. Wyoming should revise the section to reference their own regulations. Note: the sentence “The reporting requirements in Title 10 of the U.S. Code of Federal Regulations (CFR) form the basis for the compatible reporting requirements in Agreement State regulations,” should **not** be revised.

WDEQ Response:

The sentence - “The reporting requirements in Title 10 of the U.S. Code of Federal Regulations (C.F.R) form the basis for the compatible reporting requirements in Agreement State regulations.” - was not revised. Language was added to say “ as incorporated by reference in URP/SMP Chapters 3 and 4.

36. In Appendix B, section 2.1, states “Information should be initially reported to the HOO by telephone at (301) 816-5100.” Per SA-300, it is preferred for all reports to the HOO, event initial reports, are done via email, but phone/fax are acceptable.

WDEQ Response:

Updated to say Wyoming will initially report by email to the HOO, which is *Hoo.Hoc@nrc.gov*; or Hoo1@nrc.sgov.gov (secure).

37. In Appendix B, section 2.3, discusses for events that require reporting between 5-30 days. To be consistent with the guidance in SA-300, Wyoming should revise this

section to provide clarity that these reports should be submitted directly to Nuclear Material Events Database (NMED) and do not need to be emailed to the HOO or the NRC's RMSB.

WDEQ Response:

Updated section to say that all reports should be sent directly to NMED and do not need to be sent to the HOO or RMSB

38. In Appendix B, section 2.3(e), "Written Event Reports" does not align with the current version of SA-300. Wyoming should consider deleting this section in totality.

WDEQ Response:

Deleted the "Written Event Reports" section.

39. In Appendix B, section 2.4, "Reporting Following-up Event Information," does not align with the current version of SA-300. Consider replacing the information in this section with the text in SA-300 Section 4.5, "Follow-up Reports."

WDEQ Response:

Replaced the section with "Follow- up Reports" to match SA-300

40. In Appendix B, section 2.5, "Reporting Transportation Events," consider referencing SA- 300 Table 2 or otherwise including the table in the document.

WDEQ Response:

Added in the table from SA-300, no need to update with SMP/URP Rules as it is Federal DOT reporting requirements.

41. In Appendix B, section 2.5 the references to "10 CFR 71.5" and "Part 20" should be replaced with the applicable Wyoming URP/SMP rule.

WDEQ Response:

Updated to include URP/SMP Chapters 9, Section 3 (Transportation) and Chapters 3, section 4 (Part 20)

42. In Appendix B, section 2.7, "International Nuclear Event Scale Reporting," considering using the hyperlink <https://www.nrc.gov/reading-rm/doc-collections/management-directives/volumes/vol-5.html> instead to ensure that the most recent version of NRC Management Directive 5.12 is used.

WDEQ Response:

Replaced the link with the one provided above.

43. In Appendix B, section 4.2, "Preliminary Notifications" is not a topic discussed in SA-300, nor does it have particular applicability to Wyoming. Wyoming should consider deleting this section in totality.

WDEQ Response:

Deleted the Preliminary Notifications Section.

44. In Appendix B, section 5.1, "NRC Review of Material Events for Safety Significance and Generic Assessment" does not align with the current version of SA-300. Wyoming should consider replacing the intro paragraph and bullets a-d, with the text in SA-300 Section 10.1, "Evaluation of Event Notifications."

WDEQ Response:

Removed the previous section and added in the new section of SA-300.

45. In Appendix B, section 6.3, "Root Cause Analysis for Uranium Recovery Facilities," has not been revised for the SMP program. If the SMP is applicable to this section, Wyoming should revise accordingly.

WDEQ Response:

Updated language to include SMURP.

46. In Appendix B, section 7.0, "Abnormal Occurrences (AO) Guidelines and Criterial," contains extraneous information that is not in SA-300. Wyoming should consider revising this section to reflect the information contained in SA-300 and specifically consider deleting section 7.4, "Guidelines for AO Write-ups" since Agreement States do not need to write up AOs and would only be requested to provide feedback.

WDEQ Response:

Updated with info from SA-300 and MD 8.1.

47. In Appendix B, Attachment A, should reference the Wyoming SMP/URP regulations instead of the NRC requirements. Additionally, Wyoming should also include the Wyoming equivalent to 10 CFR 40.60 to the table.

WDEQ Response:

The table for 10 CRF Part 20 (Radiation Protection Standards) has been updated to include the equivalent URP/SMP regulatory rule requirement (source from Table A.1. of SA-300). Additionally, another table was created for 10 CFR Part 40 (Domestic Licensing of Source Material) and has been updated to include the equivalent URP/SMP regulatory rule requirement (source from Table A.3. of SA-300).

48. In Appendix B, Attachment D, discusses medical events which are not applicable to Wyoming's Agreement. This information should be deleted.

WDEQ Response:

Medical Event information was deleted from Attachment D.

49. In Appendix B, Attachment G, "References" is missing SA-300 under the list of NMSS procedures. Wyoming should include SA-300 as a reference.

WDEQ Response:

SA-300 added to references in attachment G.