

February 4, 1999

**FOR:** The Commissioners

**FROM:** William D. Travers /s/  
Executive Director for Operations

**SUBJECT:** PROPOSED AGREEMENT BETWEEN THE STATE OF OHIO AND THE COMMISSION PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

**PURPOSE:**

To inform the Commission of the staff's intent to publish the proposed Agreement requested by Ohio in the *Federal Register* (FR) for public comment.

**SUMMARY:**

By letter dated June 22, 1998, Governor George V. Voinovich requested that the Commission enter into an Agreement with the State of Ohio under Section 274b of the Atomic Energy Act of 1954, as amended (Act). As required by Section 274e of the Act, staff plans to publish the text of the proposed Agreement in the FR. The FR notice will include a summary of the staff's draft assessment of the proposed Ohio regulatory program for materials subject to the Agreement, and identify three specific conditions related to the Ohio program staff that must be met before the Agreement is signed. Comments on the Agreement, the assessment, and the conditions will be requested.

**BACKGROUND:**

Section 274b of the Act authorizes the Commission to enter into an agreement with the Governor of a State providing for the discontinuance of the regulatory authority of the Commission with respect to certain materials. The Commission, in 1981, adopted the revised policy statement entitled, "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 statements published on July 16, 1981 (46 FR 36969), and on July 21, 1983, (48 FR 33376), referred to hereafter as the "policy statement." Subsequently, staff adopted an internal procedure for applying the policy statement in the processing of a new agreement. The criteria elements and approaches in these documents form the basis for the staff's evaluation of the Ohio request.

Governor Voinovich was succeeded in office by Governor Bob Taft on January 11, 1999. Former Governor Voinovich is now a United States Senator from Ohio.

**DISCUSSION:**

In his letter, Governor Voinovich requested that the Commission enter into an Agreement with the State of Ohio pursuant to Section 274b of the Act. Governor Voinovich certified that Ohio has a program for the control of radiation hazards which is adequate to protect public health and safety within the State with respect to the materials covered by the proposed Agreement. The Governor further certified that the State wishes to assume the regulatory responsibility for those materials. Copies of Governor Voinovich's letter, and Chairman Jackson's response, are attached ([Attachments 1 and 2](#)). The addition of Ohio will bring the number of Agreement States to 31.

The Governor requested that authority for all six categories of materials transferrable under an Agreement be discontinued by the Commission. The categories of materials are: (1) byproduct materials as defined in Section 11e.(1) of the Act; (2) byproduct materials as defined in Section 11e.(2) of the Act (i.e., uranium and thorium milling activities); (3) source materials; (4) special nuclear materials in quantities not sufficient to form a critical mass; (5) the regulation of the land disposal of 11e.(1) byproduct, source, or special nuclear waste materials received from other persons; and (6) the evaluation of radiation safety information on sealed sources or devices containing 11e.(1) byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or Commission approved actions.

The text of the proposed Agreement is included in the FR notice in [Attachment 3](#). Originally, an effective date for the Agreement of December 1, 1998, was proposed. This date proved impractical for several reasons. First, Ohio was unable to hire, train, and qualify an adequate number of staff by that date; and second, further development of the program's procedures and regulatory guidance was needed.

NRC staff notes that Ohio may not have an adequate number of staff in the Agreement materials program when the Agreement is otherwise ready to take effect. It is the NRC staff position that an individual must be hired, trained, and qualified in accordance with the Ohio training and qualification procedure BRP-IN-100 (at least interim qualification) before a staff position is considered filled. In response to NRC comments about the staffing plan, Ohio conducted an analysis and determined that minimum staff of 21 professional/technical members, including supervisors, would be needed to operate the Agreement materials program during the first year. NRC staff reviewed the analysis and concurs with the results. The Ohio staffing plan includes additional positions in the Agreement materials program that are reserved for anticipated workload increases after the first year.

As of January 25, 1999, Ohio had filled 13 of the Agreement program staff positions and all five of the supervisor positions, and was actively working to fill the other vacancies. The Ohio program director estimates that the vacancies can be filled by April 30, 1999 (see [Attachment 8](#)). NRC staff recommends that Ohio be required to have the minimum staff of 16 health physicists and five supervisors filled before the Agreement is signed. As explained above, a staff health physicist must be hired, trained, and qualified (including use of interim qualification) in order for the position to be considered filled.

The Act requires the proposed Agreement to be published in the *Federal Register* once a week for four consecutive weeks. NRC staff estimates that 120 days will be required to complete the formal processing of the Agreement, starting the day the proposed Agreement is published for the first time. If publication is delayed until the Ohio vacancies are filled, the Agreement could be delayed beyond the current schedule for having an Agreement in effect by July 22, 1999. (See [Attachment 7](#)).

To minimize the delay, NRC staff plans to publish the proposed Agreement without waiting for the Ohio staff positions to be filled. Under this proposal, NRC staff will receive and address public comments, and when successfully resolved, propose Commission acceptance of the Agreement with the proviso that the Agreement will not be signed until the Ohio program satisfies three conditions as discussed below. This plan allows the Commission to satisfy the requirements of the Act for executing the Agreement in parallel with the recruitment, training, and qualification of the Ohio staff. Ohio will be provided additional time to complete staffing without incurring further delay in the effective date of the Agreement.


The Agreement would not be signed until three commitments made by Ohio are met. First, the State will fill the vacant staff positions. Second, the distribution of individual staff member qualifications will match the expected distribution of categories of licensees to be transferred from NRC. For example, there must be enough inspectors qualified to inspect industrial radiography operations that the program is able to inspect the number of industrial radiography licensees transferred from NRC without developing a backlog. Third, each individual staff member will be qualified, in accordance with the Ohio training and qualification plan (including use of interim qualification), to function in the areas of responsibility to which the individual is assigned.

NRC staff recognizes that the Ohio position descriptions for technical staff specify educational requirements consistent with the educational requirements for equivalent NRC staff. Ohio also has a formal plan for the training and qualification of technical staff that provides assurance of staff competence equivalent to the assurance provided by NRC Inspection Manual Chapter 1246. These factors, combined with the three conditions, will assure that the Ohio program has an adequate number of trained and qualified individual staff members. The three conditions will be clearly identified in the FR notice, and public comment invited.

The Commission should note that Ohio adopted, in statute, a definition of the term "decommissioning" which does not permit the termination of a license unless the licensed premises are decontaminated sufficiently to meet the criteria for release and unrestricted use. Staff analyzed the issue and concluded that the approach Ohio would use in decommissioning is consistent with the NRC approach of license termination under restricted release conditions, as provided in 10 CFR Part 20, Subpart E. Ohio's approach to decommissioning and the rationale for the staff position was presented to the Commission in [SECY-98-209](#), and accepted in the [Staff Requirements Memorandum \(SRM\)](#) dated November 20, 1998, as compatible with NRC's approach.

For the Massachusetts Agreement, staff obtained Commission consent prior to publishing the proposed Agreement in the *Federal Register* for public comment. The Commission reviewed the staff's preliminary assessment of the Massachusetts program, then approved the publication by notation vote. To improve timeliness, staff plans to publish the proposed Ohio Agreement for public comment in parallel with the Commission's review of the staff's draft assessment. As was done for the Massachusetts Agreement, staff will include an analysis of the public comments in a final decision paper recommending Commission approval of the Ohio Agreement.

The staff also notes that there are two ongoing NRC adjudicatory proceedings involving NRC materials licensees in Ohio (Advanced Medical Services (AMS), and Shieldalloy). Consistent with past practice, these NRC proceedings will terminate at the time the Agreement becomes effective and the licensing status for these licensees will return to the status that existed before the NRC action that gave rise to the NRC adjudicatory proceeding (e.g., for AMS, the timely application for renewal of its license will be pending before the State of Ohio).

The NRC staff believes that the Ohio request for an Agreement, as supplemented with additional information in response to NRC staff comments, with the proviso related to the program staff as discussed above, meets the criteria set forth in 274 of the Act and in the policy statement. This conclusion is based on the NRC staff assessment of the proposed program against the 36 criteria contained in the policy statement ([Attachment 4](#) .

#### SCHEDULE:

Unless directed otherwise by the Commission, the staff plans to forward the notice of the proposed Agreement to the FR ten working days after this paper is forwarded to the Commission. Attached is a milestone schedule for the completion of the Agreement ([Attachment 7](#)).


#### COORDINATION:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objections.

#### RECOMMENDATIONS:

That the Commission:

1. Review:

The proposed Agreement between the State of Ohio and the Nuclear Regulatory Commission pursuant to Section 274 of the Act ([Attachment 3](#)), and the draft of the NRC staff assessment of the Ohio regulatory program ([Attachment 4](#) ) , in parallel with the publication of the proposed Agreement in the FR.

2. Note:

a. Staff will place a copy of the full staff assessment (summarized in the FR notice) in the Public Document Room.

(Attachment 4 )

- b. Governor Voinovich's letter was acknowledged by a letter from the Chairman (Attachment 2).
- c. The Office of Congressional Affairs will dispatch a letter to the cognizant Congressional Committees informing them that the Commission is considering entering into an Agreement with the State (Attachment 5).
- d. The Office of Public Affairs will issue a press release (Attachment 6).

original /s/ by  
William D. Travers  
Executive Director for Operations

Contact: Richard L. Blanton, OSP  
415-2322

Attachments:

1. Letter from Governor Voinovich to Chairman Jackson
2. Acknowledgment Letter from Chairman Jackson to Governor Voinovich
3. Draft *Federal Register* Notice, including the Proposed Agreement
4. Draft NRC Staff Assessment of the Proposed Ohio Agreement Materials Program
5. Draft Letter to Congressional Committees
6. Draft Press Release
7. Milestone Schedule for Completion of the Agreement
8. Memorandum from Roger Suppes to Paul Lohaus dated January 20, 1999

ATTACHMENT 3

### NUCLEAR REGULATORY COMMISSION

State of Ohio: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Ohio.

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of a proposed Agreement with the State of Ohio.

**SUMMARY:** By letter dated June 22, 1998, former Governor George V. Voinovich of Ohio requested that the U. S. Nuclear Regulatory Commission (NRC) enter into an Agreement with the State as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act). Under the proposed Agreement, the Commission would give up, and Ohio would take over, portions of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing the summary of an assessment by the NRC staff of the Ohio regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the Ohio program staff, and the State's commitments concerning the program staff, as discussed in this notice.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Ohio from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the *Federal Register* and are codified in the Commission's regulations as [10 CFR Part 150](#).

**DATES:** The comment period expires (30 days after the first publication). Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

**ADDRESSES:** Written comments may be submitted to Mr. David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555-0001. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of the proposed Agreement, copies of the request for an Agreement by the Governor of Ohio including all information and documentation submitted in support of the request, and copies of the full text of the NRC staff assessment are also available for public inspection in the NRC's Public Document Room.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Blanton, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-2322 or e-mail [rlb@nrc.gov](mailto:rlb@nrc.gov).

**SUPPLEMENTARY INFORMATION:** Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 30 States. The Agreement States currently regulate approximately 16,000 agreement material licenses, while NRC regulates approximately 5800 licenses. Under the proposed Agreement, approximately 550 NRC licenses will transfer to Ohio. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e 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 the requirement.

## I. BACKGROUND

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials<sup>(1)</sup> and activities that involve use of the materials. In a letter dated June 22, 1998, Governor Voinovich certified that the State of Ohio has a program for the control of radiation hazards that is adequate to protect public health and safety within Ohio for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the "categories of materials") which the State of Ohio requests authority over are: (1) the possession and use of byproduct materials as defined in Section 11e.(1) of the Act; (2) the generation, possession, use, and disposal of byproduct materials as defined in Section 11e.(2) of the Act; (3) the possession and use of source materials; (4) the possession and use of special nuclear materials in quantities not sufficient to form a critical mass; (5) the regulation of the land disposal of byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear waste materials received from other persons; and (6) the evaluation of radiation safety information on sealed sources or devices containing byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

- Specify the materials and activities over which authority is transferred;
- Specify the activities over which the Commission will retain regulatory authority;
- Continue the authority of the Commission to safeguard nuclear materials and restricted data;
- Commit the State of Ohio and NRC to exchange information as necessary to maintain coordinated and compatible programs;
- Provide for the reciprocal recognition of licenses;
- Provide for the suspension or termination of the Agreement;
- Provide for the transfer of any financial surety funds collected by Ohio for reclamation or long-term surveillance of sites for the disposal of byproduct materials (as defined in Section 11e.(2) of the Act) to the United States if custody of the material and the disposal site are transferred; and
- 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 Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Ohio.

(c) Ohio currently regulates the users of naturally-occurring and accelerator-produced radioactive materials. The regulatory program is authorized by law in Section 3748 of the Ohio Revised Code. Subsection 3748.03 provides the authority for the Governor to enter into an Agreement with the Commission.

Ohio law contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Ohio licenses until the licenses expire or are replaced by State issued licenses. NRC licenses transferred to Ohio which contain requirements for decommissioning and express an intent to terminate the license when decommissioning has been completed in accordance with a Commission approved decommissioning plan will continue as Ohio licenses and will be terminated by Ohio when the Commission approved decommissioning plan has been completed.

(d) As described below, the proposed Agreement will be signed only after the fulfillment of commitments by Ohio to hire, train, and qualify a sufficient number of professional/technical staff. Contingent on the fulfillment of these commitments, the NRC staff assessment finds that the Ohio program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

## II. SUMMARY OF THE NRC STAFF ASSESSMENT OF THE OHIO PROGRAM FOR THE CONTROL OF AGREEMENT MATERIALS

NRC staff has examined the Ohio request for an Agreement with respect to the ability of the 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" (referred to herein as the "NRC criteria") (46 FR 7540; January 23, 1981, as amended).

(a) *Organization and Personnel.* The agreement materials program will be located within the existing Bureau of Radiation Protection (Bureau) of the Ohio Department of Health. The program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the Bureau staff members are specified in the Ohio State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection. Supervisory level staff have more than ten years working experience each in radiation protection. The Bureau chief has a bachelor's degree in physics and 15 years experience in regulatory health physics.

The Bureau currently has staff vacancies, which it is actively recruiting to fill. In response to NRC comments, the Bureau performed, and NRC staff reviewed, an analysis of the expected Bureau workload under the proposed Agreement. Based on the analysis, Ohio has made three commitments. First, the Bureau will employ a staff of at least 21 full-time professional/technical employees for the agreement materials program. Second, the distribution of the qualifications of the individual staff members will be balanced to the distribution of categories of licensees transferred from NRC. For example, there will be enough inspectors trained and qualified to inspect industrial radiography operations that the program will be able to inspect all of the industrial radiography licensees transferred from NRC without developing a backlog of overdue inspections. Third, each individual on the staff will be qualified in accordance with the Bureau's training and qualification procedure (including use of interim qualification) to function in the areas of responsibility to which the individual is assigned. In the case of individuals assigned to review radiation safety information on sealed sources or devices containing byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear materials, this commitment includes assuring that the individuals will be able to:

- Understand and interpret, if necessary, appropriate prototype tests that ensure the integrity of the products under normal, and likely accidental, conditions of use,
- Understand and interpret test results,
- Read and understand blueprints and drawings,
- Understand how the device works and how safety features operate,
- Understand and apply appropriate regulations,
- Understand the conditions of use,
- Understand external dose rates, source activities, and nuclide chemical form, and
- Understand and utilize basic knowledge of engineering materials and their properties.

(b) *Legislation and Regulations.* The Ohio Department of Health is designated by law in Chapter 3748 of the Ohio Revised Code to be the radiation control agency. The law provides the Department the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The Public Health Council is authorized to promulgate regulations.

The law requires the Public Health Council to adopt rules that are compatible with the equivalent NRC regulations and that are equally stringent to, or to the extent practicable more stringent than, the equivalent NRC regulations. The Council has adopted, by reference, the NRC regulations in Title 10 of the Code of Federal Regulations that were in effect on October 19, 1998. The adoption by reference is contained in Chapter 3701-39-021 of the Ohio Administrative Code (OAC). The Board of Health has extended the effect of the rules, where appropriate, to apply to naturally occurring radioactive materials and to radioactive materials produced in particle accelerators, in addition to agreement materials.

Ohio rule 3701-39-021 (A) specifies that references to the NRC shall be construed as references to the Director of the Department of Health. It is noted, however, that Ohio has adopted most of the NRC regulations as entire Parts, including sections that address regulatory matters reserved to the Commission. Ohio has adopted a provision in Rule 3701-39-021 (A) excepting such sections from being construed as enforced by the Director of the Department of Health. The OAC also contains a provision to avoid interference with licensees when they are complying with regulatory requirements which the Act specifies NRC must enforce and when they are complying with NRC regulatory requirements from which the State licensees have not been exempted by the proposed Agreement. The NRC staff concludes that Ohio will not attempt to enforce the regulatory matters reserved to the Commission. In accordance with NRC Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs," this approach is considered compatible.

The NRC staff review verified that the Ohio rules contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The adoption of the NRC regulations by reference assures that the standards will be uniform.

The Ohio regulations are different from the NRC regulations with respect to the decommissioning of a licensed facility and the termination of the license. Current NRC regulations permit a license to be terminated when the facility has been decommissioned, i.e., cleaned of radioactive contamination, such that the residual radiation will not cause a total effective dose equivalent greater than 25 millirem per year to an average member of the group of individuals reasonably expected to receive the greatest exposure. Normally, the NRC regulations require that the 25 millirem dose constraint be met without imposing any restrictions regarding the future use of the land or buildings of the facility ("unrestricted release"). Under certain circumstances, NRC regulations in 10 CFR Part 20, Subpart E, allow a license to be terminated if the 25 millirem dose constraint is met with restrictions on the future use ("restricted release"). Ohio law does not allow a license to be terminated under restricted release. Ohio will instead issue special "decommissioning-possession only" licenses as an alternative to license termination under restricted release. The Commission has concluded that Ohio's approach, although different, is compatible.

(c) *Storage and Disposal.* Ohio has also adopted, by reference, the NRC requirements for the storage of radioactive material, and for the disposal of radioactive material as waste. The waste disposal requirements cover both the disposal of waste generated by the licensee and the disposal of waste generated by and received from other persons.

(d) *Transportation of Radioactive Material.* Ohio has adopted the NRC regulations in 10 CFR Part 71 by reference. 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. Ohio will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) *Recordkeeping and Incident Reporting.* Ohio has adopted, by reference, the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving materials.

(f) *Evaluation of License Applications.* Ohio has adopted, by reference, the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Ohio has also developed a licensing procedures manual, along with the 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.* The Ohio radiation control program has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by NRC. The program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the report of inspection results to the licensees. The program has also adopted, by rule in the OAC, procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The Ohio Department of Health is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Ohio law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* Ohio law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Ohio. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is later. In the case of NRC licenses that are terminated under restricted conditions pursuant to 10 CFR 20.1403 prior to the effective date of the proposed Agreement, Ohio deems the termination to be final despite any other provisions of State law or rule. For NRC licenses that, on the effective date of the proposed Agreement, contain a license condition indicating intent to terminate the license upon completion of a Commission approved decommissioning plan, the transferred license will be terminated by Ohio in accordance with the plan so long as the licensee conforms to the approved plan.

Ohio 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 OAC provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors.

The proposed Agreement commits Ohio 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 Ohio's program will continue to be compatible with the Commission's program for the regulation of agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Ohio to use their best efforts to accord such reciprocity.

### III. STAFF CONCLUSION

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 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.

On the basis of its assessment, the NRC staff concludes that the State of Ohio meets the requirements of the Act, conditioned on completion of the commitments made in regard to the program staff. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

NRC will continue the formal processing of the proposed Agreement, however, the signing of the Agreement will be contingent upon the Bureau's completion of the staffing commitments.

### IV. SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 1999.

For the Nuclear Regulatory Commission.

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Annette Vietti-Cook

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**APPENDIX A**

**PROPOSED AGREEMENT**

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**AN AGREEMENT  
BETWEEN  
THE UNITED STATES NUCLEAR REGULATORY COMMISSION  
AND  
THE STATE OF OHIO  
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 (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 11e.(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 Ohio is authorized under Chapter 3748. of the Ohio Revised Code to enter into this Agreement with the Commission; and,

*Whereas*, The Governor of the State of Ohio certified on June 22, 1998, that the State of Ohio (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the health and safety of the public and to protect the environment 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 to be determined) 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 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 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 of Ohio, acting in 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 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

- a. Byproduct materials as defined in Section 11e.(1) of the Act;
- b. Byproduct materials as defined in Section 11e.(2) of the Act;
- c. Source materials;
- d. Special nuclear materials in quantities not sufficient to form a critical mass;
- e. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons; and,
- f. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

**ARTICLE II**

- A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
  2. 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;
  3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in the regulations or orders of the Commission;
  4. 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 be so disposed without a license from the Commission.
- B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material 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 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 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 public health, safety, welfare, or the environment;
- d. The authority to require, in the case of a license, if any, 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 the 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 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.

### **ARTICLE III**

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 from licensing issued by the Commission.

### **ARTICLE IV**

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 V**



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 State and Commission 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 VI**

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 such reciprocity will be accorded.

**ARTICLE VII**

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. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement 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 VIII**

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 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 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 IX**

This Agreement shall become effective on July 22, 1999, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Columbus, Ohio this (date to be determined).

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION

\_\_\_\_\_, Chairman

FOR THE STATE OF OHIO

\_\_\_\_\_, Governor

ATTACHMENT 5

The Honorable James M. Inhofe, Chairman  
Subcommittee on Clean Air, Wetlands, Private  
Property and Nuclear Safety  
Committee on Environment and Public Works  
United States Senate  
Washington, D. C. 20510

Dear Mr. Chairman:

This is to inform the Subcommittee that by letter dated June 22, 1998, Governor George V. Voinovich on behalf of the State of Ohio submitted a proposed Agreement between the U.S. Nuclear Regulatory Commission and the State of Ohio under Section 274 of the Atomic Energy Act of 1954, as amended.

An announcement of the proposed Agreement, along with a summary of the NRC staff assessment of the proposed Ohio program will be published in the *Federal Register*. A pre-publication copy of the *Federal Register* Notice is enclosed.

We will inform you when the Commission has completed its consideration of the proposed Agreement.

Sincerely,  
Dennis K. Rathbun, Director  
Office of Congressional Affairs

Enclosure: As stated

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**IDENTICAL LETTERS TO:**

The Honorable Bob Graham  
Subcommittee on Clean Air, Wetlands, Private  
Property and Nuclear Safety  
Committee on Environment and Public Works  
United States Senate  
Washington, D. C. 20510

The Honorable Dan Schaefer, Chairman  
Subcommittee on Energy and Power  
Committee on Commerce  
United States House of Representatives  
Washington, D. C. 20515

Ranking Minority Member  
Subcommittee on Energy and Power  
Committee on Commerce  
United States House of Representatives  
Washington, D. C. 20515

**Ohio Congressional Delegation**

Senators

The Honorable Mike DeWine  
The Honorable George V. Voinovich

Representatives

The Honorable Steve Chabot  
The Honorable Rob Portman  
The Honorable Tony P. Hall  
The Honorable Michael G. Oxley  
The Honorable Paul E. Gillmor  
The Honorable Ted Strickland  
The Honorable David L. Hobson  
The Honorable John A. Boehner  
The Honorable Marcy Kaptur  
The Honorable Dennis J. Kucinich  
The Honorable Stephanie Tubbs Jones  
The Honorable John R. Kasich  
The Honorable Sherrod Brown  
The Honorable Thomas C. Sawyer  
The Honorable Deborah Pryce  
The Honorable Ralph Regula  
The Honorable James A. Traficant, Jr.  
The Honorable Robert W. Ney  
The Honorable Steven C. LaTourette

**NRC CONSIDERING REQUEST BY OHIO  
TO BE AN 'AGREEMENT STATE'**

The Nuclear Regulatory Commission is considering a request from former Ohio Governor George V. Voinovich that Ohio assume part of NRC's regulatory authority over certain nuclear materials. If the agreement is accepted, Ohio will become the 31<sup>st</sup> State to sign such an agreement with NRC.

Under the agreement, NRC would transfer to Ohio the responsibility for licensing, rulemaking, inspection and enforcement concerning the use of (1) radioactive materials produced as byproducts during operation of certain nuclear reactors; (2) uranium and thorium source materials; and (3) small quantities of fissionable materials.

The agreement also would allow the State to regulate the land disposal of radioactive waste and to conduct safety evaluations of sealed radioactive sources and devices for medical and industrial use.

By law, NRC retains jurisdiction over regulation of nuclear reactors and other major nuclear facilities. It also continues to regulate Federal agencies which use certain nuclear materials and companies which distribute such materials (as in smoke detectors) to members of the public.

If the agreement is approved, about 550 NRC licenses, most of them for medical and industrial uses, would be transferred to the jurisdiction of the State of Ohio.

Before entering into the agreement, NRC must determine that the State's radiation control program is adequate to protect public health and safety, and is compatible with the agency's own program for regulating the radioactive materials covered in the agreement.

The proposed agreement, along with an assessment of the Ohio proposed regulatory program, is published for public comment in the **(date)** edition of the *Federal Register* and also will be published once each week for the next three weeks. Comments should be sent to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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1. The radioactive materials, sometimes referred to as "agreement materials," are: (a) byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) source materials as defined in Section 11z. of the Act; and (d) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.