

## **POLICY ISSUE NOTATION VOTE**

August 18, 2009

SECY-09-0114

FOR: The Commissioners

FROM: R. W. Borchardt  
Executive Director for Operations

SUBJECT: SECTION 274b AGREEMENT WITH THE STATE OF NEW JERSEY

### PURPOSE:

To request Commission approval of the proposed Agreement with the State of New Jersey. This paper does not address any new commitments.

### SUMMARY:

On October 16, 2008, Governor Jon S. Corzine of the State of New Jersey requested that the Commission enter into an Agreement under Section 274b of the Atomic Energy Act of 1954, as amended (the Act). The Commission, through a Staff Requirements Memorandum (SRM) dated May 18, 2009, "SECY-09-0065, Proposed Agreement between the State of New Jersey and the Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended," agreed to publish a notice of the proposed Agreement (Enclosure 1) in the *Federal Register* (FR). The agency published the notice as required by the Act and requested comments. The public comment period ended on June 26, 2009, and the U.S. Nuclear Regulatory Commission (NRC) received six comment letters. Based on the staff's review of the proposed New Jersey program and analysis of the comments, the staff recommends that the Commission approve the proposed Agreement (Enclosure 1).

### BACKGROUND:

In SECY-09-0065, the staff of the NRC presented a draft of its assessment and discussed the statutory and policy background of the New Jersey Agreement State program.

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The Commission approved the staff's recommendation to proceed with processing the application for the New Jersey Agreement State program in an SRM dated May 18, 2009. As required by Section 274e of the Act, the agency published the proposed Agreement in the *FR* on May 27, 2009 (74 FR 25283), June 3, 2009 (74 FR 26739), June 10, 2009 (74 FR 27572), and June 17, 2009 (74 FR 28728). The comment period ended on June 26, 2009. The NRC made the full text of the staff assessment available through its Agencywide Documents Access and Management System and Public Electronic Reading Room.

The Agreement will allow New Jersey to assume regulatory authority for byproduct materials as defined in Sections 11e.(1), 11e.(3), and 11e.(4) of the Act; source materials; special nuclear materials not sufficient to form a critical mass, and regulation of land disposal of byproduct material, source material, or special nuclear material waste received from other persons. New Jersey is not seeking authority to (1) conduct safety evaluations of sealed sources and devices manufactured in New Jersey and distributed in interstate commerce, and (2) regulate Section 11e.(2) byproduct material resulting from the extraction or concentration of source material from ore processed primarily for its source material content, and its management and disposal.

#### DISCUSSION:

##### (1) Public Comments

The *FR* notice requested comments regarding (1) the proposed Agreement, (2) the NRC staff assessment of the New Jersey Agreement State program, (3) the adequacy of the New Jersey Agreement State program, and (4) the adequacy of the New Jersey Agreement State program staff. The NRC received six comment letters in response to the notice that the Governor of New Jersey has proposed to enter into an Agreement with the Commission under Section 274b of the Act.

The NRC received comments from the Organization of Agreement States; two members of the public; a regulatory and nuclear consultant; and two NRC licensees located within the State of New Jersey. Two commenters support the Agreement, two commenters oppose the Agreement and one commenter did not state either way. The remaining commenter supports the rationale whereby States can assume regulatory authority; however, was not supportive of the difference in fees between New Jersey and NRC. The staff analysis of the public comments is provided in Enclosure 2.

In summary, the comments did not provide any new information that would change the conclusions in the staff assessment of the New Jersey program. The staff has not changed the assessment in response to the comments.

##### (2) SECY-09-0065

In SECY-09-0065, the NRC staff concluded that, based on the draft assessment, New Jersey satisfied the Commission's policy statement and; therefore, met the requirements of Section 274 of the Act. The staff's final assessment (Enclosure 3) of the New Jersey program reflects the same conclusion that the State satisfies the Commission's policy statement and; therefore, meets the requirements of Section 274 of the Act.

### (3) Transfer of Licenses

Currently, the NRC would transfer approximately 500 NRC licenses, either in whole or in part, to New Jersey's jurisdiction. The NRC staff is continuing to work closely with the New Jersey staff to effect a smooth transition. The staff is coordinating with the New Jersey staff on current and pending licensing, inspection, and enforcement activities involving the licenses to be transferred to ensure the smooth continuation of regulatory actions after the transfer.

### (4) Actions Pending Against Licensees to be Transferred

At the current time, the NRC Office of Investigations has two pending investigations that may result in escalated enforcement actions against an NRC licensee located within the State. The NRC Office of Enforcement has one pending enforcement action against another licensee. Additionally, six allegations are currently open related to NRC licensees within the State. The remaining open actions that the NRC is unable to close between now and the effective date of the Agreement will either continue to be handled by the NRC with the involvement of the State or will be transferred to the State. The NRC will work closely with the State to ensure the smooth transition of authority over these open cases before the effective date of the Agreement.

### (5) Outstanding Orders, Confirmatory Action Letters, and 10 CFR 2.206 Petitions Against Licensees that Will Transfer

The NRC issued orders and license conditions for Increased Controls (EA-05-090) and Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Materials (EA-07-305) to licensees in the State of New Jersey. Thirty licensees are implementing these requirements based on the quantities of regulated materials that they possess. The NRC staff will incorporate these Orders into the licenses, by license condition, by the effective date of the Agreement. Therefore, these security requirements will transfer with the licenses when the New Jersey Agreement becomes effective.

### (6) Status of Decommissioning Sites and Method for Providing Information on Previously Licensed Sites

The NRC maintains status summaries for all decommissioning sites on NRC's public web site, including those that are considered complex decommissioning sites. The Commission and the public have access to the site summaries through <http://www.nrc.gov/info-finder/decommissioning/complex/>. Currently, there are two sites in New Jersey that are considered complex decommissioning sites – Stepan Chemical Company and Shieldalloy Metallurgical Corporation.

Under the Agreement, regulatory authority for Stepan Chemical Company will remain with NRC. The radioactive material at Stepan Chemical Company's site is Section 11e.(2) byproduct material resulting from the extraction or concentration of source material from ore processed primarily for its source material content, and its management and disposal. New Jersey has not requested this class of materials under its Agreement; therefore, the jurisdiction for this site will remain with NRC.

New Jersey has requested regulatory authority over source material. As a result, the regulatory authority for the Shieldalloy Metallurgical Corporation (SMC) site in Newfield, New Jersey, will

transfer to the State on the effective date of the Agreement. SMC is a source material licensee and currently has a decommissioning plan under review by NRC. NRC is unable to complete its review of the decommissioning plan prior to the effective date of the Agreement as NRC is still waiting for additional information from SMC, including results from technical studies.

#### (7) Naturally-Occurring and Accelerator-Produced Radioactive Materials

The Energy Policy Act of 2005 (EPAct) became effective immediately upon signature by the President on August 8, 2005, and authorized the Commission to regulate naturally-occurring and accelerator-produced radioactive material (NARM) as defined in the amended definition of byproduct material in Section 11e.(3) and (4) of the Atomic Energy Act. Many States regulated this material under their existing State radiation programs. New Jersey has maintained a strong NARM program for many years regulating approximately 500 NARM licensees. The EPAct, in Section 651(e)(5), authorized the Commission to issue a waiver of the requirements in Section 651(e) to any entity with respect to these NARM materials for specified periods of time if the Commission determined that the waiver was in accordance with the protection of the public health and safety and the promotion of the common defense and security. The EPAct limited the waiver to a time period no longer than 4 years. The Commission determined that there was no basis to conclude that the NARM materials would not continue to be used in a manner that is protective of public health and safety while the waiver is in effect. The Commission then granted a waiver (70 FR 51581; August 31, 2005) from the requirements of Section 651(e) of the EPAct.

Regulations to address the requirements of the EPAct were effective on November 30, 2007, and are referred to as the "NARM rule." As part of the NARM rule, NRC specifically allowed a transition period for licensees/applicants to submit license amendments or new license applications as needed for NARM. A Transition Plan was noticed in the *FR* on October 19, 2007 (72 FR 59157). The purpose of the Transition Plan is to facilitate an orderly transition of regulatory authority with respect to the NARM materials. The NRC recognized that some States may be interested in becoming Agreement States based on the passage of the EPAct. Therefore, the staff indicated in the Transition Plan that, "Every effort will be made to complete an Agreement as soon as practical, without compromising quality and completeness... If any Agreements cannot be completed before the waiver expires on August 7, 2009, the Commission may consider, on a case-by-case basis, options to limit the impact on affected users of 11e.(3) and 11e.(4) byproduct material in the States."

The Agreement for New Jersey will not be effective prior to the expiration of the NARM waiver. Staff believes that there will be a minimal impact on New Jersey licensees because of this interim time period of about 7 weeks between the expiration of the NARM waiver and the effective date of the Agreement. NRC will have jurisdictional authority during this time and there will not be a regulatory gap. NRC and New Jersey have discussed this during numerous meetings to ensure a clear understanding of the jurisdiction during this interim time period, and to ensure an efficient transition. Paul Baldauf, Assistant Director, Radiation Protection and Release Prevention, provided a letter to NRC confirming his understanding of the NARM waiver expiration and the jurisdictional authority by the NRC during this interim time period. This letter, and the NRC response, may be found in Enclosure 4. A summary of the NARM waiver expiration and the impact on the New Jersey Agreement is provided in Enclosure 5.

### (8) Effective Date of the Agreement

The Governor of New Jersey requested an effective date for the Agreement of no later than September 30, 2009. Commission direction no later than September 16, 2009, is critical in order to have the Agreement effective by this date. This is necessary to minimize the interim time period between the NARM waiver expiration and the effective date of the Agreement, as well as to allow adequate time for the signing of the Agreement, the orderly transfer of the files, and the assumption of authority by New Jersey. An effective date of September 30, 2009, will also avoid fiscal year 2010 NRC fees for the licenses transferring to New Jersey. If the Agreement is approved by the Commission and is effective after September 30, 2009, these licensees will be assessed fees by New Jersey. See Enclosure 6 for a schedule of the remaining steps for processing the Agreement.

#### IMPLEMENTATION:

Following execution of the Agreement, the staff will continue to interact with the State of New Jersey. This interaction will consist of the exchange of regulatory information, notices of NRC training courses, and conducting periodic onsite reviews of New Jersey's program for the regulation of Agreement materials. The regulatory information exchange includes reports of incidents; significant enforcement actions; and amendments to policies, regulations, or guidance. Communications are generally more frequent with a new Agreement State during the first few years after the Agreement is signed.

The staff will tentatively schedule an orientation meeting between NRC and New Jersey Department of Environmental Protection, Bureau of Environmental Radiation, for 9 months after the effective date of the Agreement to discuss the initial program implementation. The first Integrated Materials Performance Evaluation Program (IMPEP) review of the New Jersey Agreement State program will be tentatively scheduled for 18 months after the effective date of the Agreement. Subsequent routine IMPEP reviews will occur at 4-year intervals. The interval may be shortened if performance weaknesses are identified during routine reviews or other interactions with New Jersey.

If approved by the Commission, New Jersey will bring the number of Agreement States to 37.

#### RESOURCES:

Staff estimates approximately 5 full-time equivalents are required in FY 2009 to perform materials licensing, inspection, decommissioning, enforcement, allegation casework and transition activities related to New Jersey. These resources are included in the FY 2009 budget within the Materials Users subprogram. The Office of Federal and State Materials and Environmental Management Programs anticipates a cost savings due to the transfer of regulatory authority to New Jersey, and has incorporated the resource adjustment in the FY 2010 budget.

#### CONCLUSION:

The NRC staff concludes that the State of New Jersey satisfies the criteria in the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory

Authority and Assumption Thereof by States Through Agreement,” and; therefore, meets the requirements of Section 274 of the Act.

The proposed New Jersey program to regulate Agreement program materials; comprising statutes, regulations, and procedures; is compatible with the Commission’s program and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

### RECOMMENDATIONS:

That the Commission:

1. Find:

- a. That the proposed New Jersey program for the regulation of byproduct material, source material, special nuclear material in quantities not sufficient to form a critical mass, and regulation of land disposal of byproduct material, source material, or special nuclear material waste received from other persons is compatible with the Commission’s program for the regulation of like material; and
- b. That the proposed New Jersey program is adequate to protect public health and safety within the State with respect to the materials and uses covered by the proposed Agreement.

2. Approve:

- a. The proposed Agreement between the State of New Jersey and the NRC pursuant to Section 274 of the Act, as set forth in Enclosure 1, by September 16, 2009, allowing adequate time for the signing of the Agreement, the orderly transfer of license files and the assumption of regulatory authority by the State of New Jersey on September 30, 2009.

3. Note:

- a. Approval of the proposed Agreement will result in the State of New Jersey reassuming regulatory authority over NARM which terminated on August 7, 2009 with the termination of the Commission-issued waiver (70 FR 51581).
- b. The Governor of New Jersey does not desire a formal signing ceremony. Therefore, upon approval of the Agreement by the Commission, the NRC staff will prepare the formal documents for the Chairman’s signature. After the Chairman signs the Agreement, the staff will deliver the Agreement to New Jersey for the Governor’s signature (Enclosure 7).
- c. Pursuant to the Act, the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), and Commission guidance, the staff will inform the Speaker of the House of Representatives, the President of the Senate, the New Jersey Congressional delegation and the Director of the Government Accountability Office of the Commission’s decision.

- d. The NRC Office of Public Affairs will issue a press release.
- e. The agency will publish the text of the Agreement in the *FR*, as required by Section 274e of the Act, within 30 days after the Agreement is signed (Enclosure 8).

**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 objection. The staff has obtained concurrence from the Office of Management and Budget that this action does not constitute a “major rule” under SBREFA.

***/RA Martin Virgilio for/***

R. W. Borchardt  
Executive Director  
for Operations

**Enclosures:**

1. Proposed Agreement
2. Staff Analysis of Public Comments
3. NRC Staff Assessment
4. Letter from P. Baldauf, NJ  
and NRC Response
5. Summary of NARM Waiver expiration
6. Current Milestone Schedule
7. Draft Letter from Chairman Jaczko  
to Governor Corzine
8. Draft *FR* Notice

**ENCLOSURE 1**

**PROPOSED AGREEMENT BETWEEN THE NRC  
AND THE STATE OF NEW JERSEY**

**AN AGREEMENT  
BETWEEN  
THE UNITED STATES NUCLEAR REGULATORY COMMISSION  
AND  
THE STATE OF NEW JERSEY  
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 (the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 *et seq.* (hereinafter referred to as the Act), to enter into Agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (2), (3), and (4) 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 New Jersey is authorized under The Radiation Protection Act, N.J.S.A. 26:2D-1, to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State of New Jersey certified on October 16, 2008, that the State of New Jersey (the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on **[date]** that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

WHEREAS, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, This Agreement is entered into pursuant to the provisions of the Act;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State acting on behalf of the State as follows:

## ARTICLE I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials;
5. Special nuclear materials in quantities not sufficient to form a critical mass; and
6. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

## ARTICLE II

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 materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;
5. 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;
6. The regulation of byproduct material as defined in Section 11e.(2) of the Act.

### ARTICLE III

With the exception of those activities identified in Article II.1 through 4, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

### ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

### ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

### ARTICLE VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible.

The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

### ARTICLE VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

## ARTICLE VIII

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 judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

## ARTICLE IX

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

Done at Rockville, Maryland, in triplicate, this [date] day of [month], [year].

FOR THE UNITED STATES NUCLEAR  
REGULATORY COMMISSION

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Gregory B. Jaczko, Chairman.

Done at Trenton, New Jersey, in triplicate, this [date] day of [month], [year].

FOR THE STATE OF NEW JERSEY

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Jon S. Corzine, Governor.

**ENCLOSURE 2**

**STAFF ANALYSIS OF PUBLIC COMMENTS**

**STAFF ANALYSIS OF PUBLIC COMMENTS  
ON THE PROPOSED NEW JERSEY AGREEMENT**

<b>Commenter</b>	<b>Affiliation</b>	<b>ADAMs Accession Number</b>
Julia Schmitt, Chair	Organization of Agreement States	ML091680374
Anonymous	No known affiliation	ML091680375
Hoy E. Frakes, Jr	President, Shieldalloy Metallurgical Corporation	ML091700382 and ML091680491
Loretta Williams	No known affiliation	ML091680387
James Lieberman	Regulatory and Nuclear Consultant	ML091810997
Gregory R. Reinhard, MBA, DVM	Merck & Co., Inc.	ML091900370

## **INTRODUCTION:**

U.S. Nuclear Regulatory Commission (NRC) staff received six comment letters in response to a public notice that the Governor of New Jersey has requested to enter into an Agreement with the Commission under Section 274b of the Atomic Energy Act of 1954, as amended. NRC received comments from the Organization of Agreement States (OAS), two members of the public, a regulatory and nuclear consultant, and two NRC licensees from the State of New Jersey (NJ). Two commenters supported the Agreement, two commenters opposed the Agreement and one commenter did not state an opinion. The remaining commenter supported the rationale whereby States can assume regulatory authority; however, was not supportive of the difference in fees between NJ and NRC. A summary of the comments received and NRC's response is provided below.

The agency published the notice in the *Federal Register (FR)* on May 27, 2009; June 3, 2009; June 10, 2009; and June 17, 2009. The notice contained a copy of the proposed Agreement and a summary of NRC staff's draft assessment of the proposed NJ Agreement State program. The *FR* requested comments in four categories: (1) the proposed Agreement, (2) the NRC Staff Assessment of the NJ Agreement State Program, (3) the adequacy of the NJ Agreement State Program, and (4) the adequacy of the NJ Agreement State Program staff.

## **SUMMARY OF COMMENTS ON THE PROPOSED AGREEMENT**

### **Comments Supporting the Agreement**

#### Summary of Comments

1. The OAS "strongly supports" the Agreement between NRC and the State of NJ. The OAS letter stated that "The OAS is committed to the improvement of radiation regulation nationwide, and to fostering a cooperative and productive partnership among Agreement States, with the U.S. Nuclear Regulatory Commission, and with other Federal, State and Local agencies involved in the regulation of radioactive materials."
2. A member of the public, Loretta Williams, expressed her support for the Agreement between NRC and the State of NJ. Ms. Williams indicated that she has been involved as a member of the public related to the decommissioning of an NRC-licensed facility in her community. She believes that the State's regulatory program will protect the health and welfare of the residents of the community by enforcing a complete cleanup of the radioactive waste, off-site, at a licensed waste facility.

#### NRC Staff Response

The comments support NRC staff's plan to complete the NRC Staff Assessment documenting that the Commission's criteria for entering into an Agreement are satisfied and then to request the Commission's approval of the proposed Agreement with State of NJ.

No changes were made to the NRC Staff Assessment based on these comments.

## Comments Opposing the Agreement

### Summary of Comments

1. A member of the public did not approve of the Federal government giving regulatory authority of this Agency to the State of NJ for this radioactive material. This individual preferred that the Federal government keep regulatory authority, commenting that while the Federal government is corrupt, NJ government is more corrupt.

### NRC Staff Response

This individual did not provide any specific reasons regarding his/her belief that NJ government is corrupt. The individual did not provide any information that caused the staff to reassess the original assessment that the proposed NJ Agreement State Program is adequate to protect public health and safety and compatible with NRC's regulatory program.

No changes were made to the NRC Staff Assessment based on this comment.

2. Shieldalloy Metallurgical Corporation (SMC) submitted comments opposing the proposed Agreement with the State of NJ. SMC generally commented that NRC should deny NJ's application to become an Agreement State because NJ's regulatory program fails to meet NRC's compatibility criteria or implementation standards in NRC's Policy Statement, *Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement*, 46 Fed. Reg. 7,540, 7,543 (1981), as amended by 46 Fed. Reg. 36,969 (1981) and 48 Fed. Reg. 33,376 (1983) [Criteria Statement of Policy]. SMC further commented that if NJ became an Agreement State, NRC should retain authority over SMC's facility in Newfield, NJ. NRC addresses SMC's specific comments below.

#### A. The NJ Program Fails to Meet the NRC's Compatibility Criteria

##### General Comment:

SMC stated it sent NRC its public comments submitted to NJ on July 18, 2008, during the public comment period on the State's proposed regulations. SMC criticized NRC for not referencing or addressing SMC's comments. In these comments, SMC said they pointed out the inconsistency between NJ's regulatory framework and those of NRC. SMC states that the draft NRC Staff Assessment of the NJ program application is incomplete and in part erroneous and must be substantially revised to recognize the incompatibility of the NJ Program with NRC's program.

##### NRC Staff Response:

In reviewing a State's proposed regulations, NRC does not evaluate public comments that a State receives during its public comment period on its proposed regulations. NRC reviews the State's final regulations when it assesses the Agreement State application.

During the application process, NRC reviews a State's radiological program to ensure that it is compatible with NRC's regulatory program and adequate to protect public health and safety from radiation hazards. NRC staff reviews the State's application in accordance with (1) the Office of Federal and State Materials and Environmental Management Programs

(FSME) Procedure SA-700, "Processing an Agreement," and (2) the Statement of Policy, "Criteria for Guidance of States and NRC in Discontinuance of NRC Authority and Assumption Thereof by States through Agreement," (46 FR 7540, January 21, 1981; 48 FR 33376, July 23, 1983) [Criteria Statement of Policy]. This Criteria Statement of Policy describes the criteria that a State must meet in order to enter into an Agreement with NRC. (SMC specific comments also refer to the criteria described in this document).

NRC reviewed NJ's final regulations using the above criteria and found that the State's regulatory program is adequate to protect public health and safety and compatible with NRC's regulatory program. These findings are documented in the NRC Staff Assessment. NRC disagrees with SMC's comment that "The NRC Staff Assessment is incomplete, in part erroneous, and must be substantially revised."

No changes were made to the NRC Staff Assessment based on this comment.

### Specific Comments

#### 1. The Regulations issued by NJDEP are Invalid

SMC stated that NJ regulations are invalid because they were not adopted in accordance with the procedural requirements of NJ's Administrative Procedures Act (APA). N.J.S.A. 52:14B-1 *et seq.* SMC's bases for asserting the regulations are invalid were: (1) NJ failed to conduct a proper Federal Standards Analysis as required by State law; (2) NJ failed to analyze and minimize the adverse economic impacts of its proposal to become an Agreement State as required by NJ's Regulatory Flexibility Act; and (3) NJ's modification of the final rule to apply to "all persons" was a substantial change requiring notice and comment under the State APA.

### NRC Staff Response

SMC's comments express its concern that NJ failed to comply with State laws when enacting its regulations. NRC reviews the State's statutory and administrative procedures to assure the fair and impartial administration of regulatory law, which include public participation and procedures for formulation of rules of general applicability (Criterion 23 – Criteria Statement of Policy, page 7543). NRC reviewed NJ's statutory provisions and determined that the State had adequate authority to establish a regulatory program for regulating radioactive materials and enter into an Agreement. In particular, State Statute N.J.S.A. 26:2D-7 provides the New Jersey Department of Environmental Protection (NJDEP) authority for the promulgation of codes, rules or regulations, stating that "the commission shall have the power to formulate, adopt, promulgate, amend and repeal codes, rules and regulations as may be necessary to prohibit and prevent unnecessary radiation in accordance with the provisions of the 'Administrative Procedures Act.'" NRC further reviewed the State's APA and found that NJ has extensive requirements in N.J.S.A. 52:14B-2, B-3, B-4, and B-22, including a public comment process and opportunity for hearing.

NRC's review found that the State's radioactive material program and regulations adequate to protect public health and safety and compatible with NRC's regulatory program. NRC has not received any evidence, such as a State court ruling, to indicate that the proposed regulatory program cannot be implemented. Questions regarding whether a State complied

with State law when promulgating their regulations should be addressed through the State's administrative process.

No changes were made to the NRC Staff Assessment based on this comment.

2. The NJ Program Fails to Satisfy Compatibility Criterion 9 in that it sets Release Criteria that Differ from Those in 10 CFR Part 20

SMC commented that the NJ regulations differ from the radiological criteria for license termination in 10 CFR Part 20 in many significant respects, in violation of Criterion 9. SMC gave several examples where it believes that NJ regulations differ from NRC regulations, such as: (1) the maximum allowable total dose to a member of the public of 15 mrem/year versus 25 mrem/year in NRC's regulations, (2) failure to include implementation of the "as low as reasonably achievable" (ALARA) principle, (3) failure to include provisions for restricted release, (4) allowing calculation of peak dose over 1,000 years, (5) failure to allow for more than 100 mrem total effective dose equivalent under any circumstances, and (6) requiring that the radioactivity releases to ground and surface waters be limited to the levels set by the NJ Ground Water And Surface Water Standards.

NRC Staff Response

NRC reviews State regulatory requirements to ensure they are compatible with the NRC regulatory program and adequate to protect public health and safety. NRC establishes the compatibility level for each NRC regulation and program element according to FSME Procedure SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements" and reviews Agreement State programs according to the Handbook for NRC Management Directive 5.9, *Adequacy and Compatibility of Agreement State Programs*. A regulation's compatibility designation determines how much flexibility a State has in adopting a specific regulation while maintaining compatibility with NRC's program.

"Statement of Principles and Policy for the Agreement State Program: Policy Statement on Adequacy and Compatibility of Agreement State Programs, Final Policy Statement" (62 FR 46517, 46524-46525, September 3, 1997) (Adequacy and Compatibility Policy Statement) explains that Agreement States have "flexibility in program implementation to accommodate individual State preferences, State legislative direction, and local needs and conditions. ... That is, a State would have the flexibility to design its own program, including incorporating more stringent, or similar, requirements provided that the requirements for adequacy are still met and compatibility is maintained, and the more stringent requirements do not preclude or effectively preclude a practice in the national interest without an adequate public health and safety or environmental basis related to radiation protection" (Adequacy and Compatibility Policy Statement, at 46520, column 2).

An Agreement State radiation control program is compatible with the NRC's regulatory program when its "program does not create conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis" (Adequacy and Compatibility Policy Statement at 46524). NRC developed Compatibility Categories to designate how much flexibility a State would have when adopting a specific regulatory provision. NRC assigns a Compatibility Category to each NRC regulation. The Compatibility Categories vary from requiring the State standards to be essentially identical to NRC standards to program elements not required, or even

prohibited, for State adoption. In particular, Compatibility Category “C” regulations do not require that the State be essentially identical to NRC standards. Compatibility Category “C” regulations allow more flexibility but require the Agreement State program elements to embody the essential objectives of the corresponding NRC program elements.

SMC commented that the NJ program fails to satisfy Criterion 9. While Criterion 9 applies to disposal of low level waste, SMC examples are regulations in the “License Termination Rule (LTR),” in Subpart E of 10 CFR Part 20. The final LTR was noticed in the *FR* on July 21, 1997 (62 FR 39058). The compatibility designation of this rule is addressed in the Statements of Consideration (SOC) for the final rule, in Section F.1, “State and NRC Compatibility,” in the comment resolution. NRC originally designated the LTR as a Division 2 Rule. Subsequently, NRC developed the Adequacy and Compatibility Policy Statement and reclassified the LTR as Compatibility Category “C.” As previously discussed, the Adequacy and Compatibility Policy Statement explained that Compatibility Category “C” designates program elements “that are important for an Agreement State to have in order to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nation wide basis. Such Agreement State program elements should embody the essential objectives of the corresponding Commission program elements” (Adequacy and Compatibility Policy Statement at 62 FR 46524, column 3).

NRC assigned the LTR as Compatibility Category “C” because the rule addresses basic principles of radiation safety and regulatory functions that allow a State to establish regulations and dose limits for license termination and decommissioning that provide a sufficient and ample margin of safety and to ensure compliance with the public dose limits of 10 CFR Part 20. The SOC for the LTR also stated that “[T]he States would be required to adopt the regulation but would have significant flexibility in language, and would be allowed to adopt more stringent requirements” (Radiological Criteria for License Termination, Final Rule 62 FR 39058, 39080 (July 21, 1997)).

Some of NJ’s license termination regulations are more stringent than NRC regulatory requirements. Using the above criteria, NRC’s assessment of NJ regulations found the State’s license termination and decommissioning regulations compatible since they meet the essential objectives of the NRC program elements and provide a level of protection of public health and safety that is at least equivalent to that afforded by NRC’s requirements.

No changes were made to the NRC Staff Assessment based on this comment.

### 3. The NJ Program fails to Satisfy Compatibility Criterion 12

SMC commented that NJ regulations fail to meet Criterion 12 because the regulations do not provide the State the ability to grant necessary exceptions to the regulatory standards that do not jeopardize health and safety in individual cases. SMC provided four examples in which it states that NJ’s regulations fail to allow necessary exemptions to comply with Criterion 12: (1) no consideration of alternate remediation standards that would increase the allowed incremental dose criterion of 15 mrem/yr, (2) no consideration of alternate remediation standards if they would result in doses exceeding 100 mrem/yr for an “all controls fail” scenario, (3) NJ regulations require that the calculations of doses from radiological decommissioning use only tables of parameters based on specific exposure scenarios, and (4) NJ regulations allow no credit for any engineering controls when determining if the 100 mrem annual dose is exceeded. SMC stated that NJ regulations

provide no justification for requiring stricter remediation standards than those provided by NRC, or for not allowing licensees to apply the Federal standards when appropriate. SMC also commented that NJ's regulations conflict with NRC guidance. For these reasons, SMC believes that NJ regulations are incompatible with the NRC regulatory framework.

#### NRC Staff Response

The State regulation, N.J.A.C. 7:28-2.8, allows the Department, upon application and a showing of hardship or compelling need, with the approval of the NJDEP Commission, to grant an exemption from any requirement of the rules should it determine that such exemption will not result in any exposure to radiation in excess of the limits permitted by N.J.A.C. 7:28-6, "Standards for protection against radiation." This regulation fulfills Criterion 12.

SMC's examples are based on the State's regulations that are compatible with NRC's LTR. As discussed in the previous response, these regulations are Compatibility Category "C," and this allows States flexibility in meeting the essential objectives of these NRC program elements. NRC's assessment of NJ regulations found the State's license termination and decommissioning regulations compatible by meeting the essential objectives of the NRC program elements. NJ regulations also provide a level of protection of public health and safety that is at least equivalent to that afforded by NRC requirements.

SMC also commented that NJ's regulations are in conflict with NRC guidance. NRC guidance is not a regulatory requirement and is not legally binding. NRC develops guidance documents to assist licensees in meeting regulatory requirements. NRC does not require State regulations to be consistent with NRC guidance documents.

No changes were made to the NRC Staff Assessment based on this comment.

#### 4. The NJ Program Fails to Satisfy Compatibility Criterion 17

SMC commented that the NJ Radiological Program fails to meet NRC's Criterion 17 which requires licensees to provide access to inspectors. SMC states that the NJ statute, in the Radiation Protection Act, N.J.S.A. 26:2D-1 *et seq.*, does not authorize inspections without either consent of the licensee or an order and concludes that the NJ regulation purporting to authorize warrantless inspections, in 7:28-4.14, lacks an adequate legal basis in NJ law.

#### NRC Staff Response

Criterion 17 requires that a State have authority such that licensees shall be under obligation by law to provide access to inspectors. NRC reviewed NJ's regulations and legislative authority to ensure this authority was in place. NJDEP has general authority to "enter and inspect a building or place for the purpose of investigating an actual or suspected source of pollution of the environment and ascertaining compliance and non-compliance with any codes, rules, or regulations of the Department" (N.J.S.A. 13:1D-9(d)). In addition, the Radiation Protection Act has a similar provision to allow the NJDEP inspectors to: "Enter and inspect any building or place for the purpose of investigating an actual or suspected source of radiation and ascertaining compliance with this act or any rule, regulation or order promulgated or issued pursuant thereto and inspect radiation sources, their shielding and immediate surroundings, and records concerning their operation for the determination of any possible radiation hazard" (N.J.S.A. 26-2D-9(j)).

Based on these legislative provisions, NRC concluded that NJ has adequate legislative authority and can implement regulations to meet the essential objectives of Criterion 17 that licensees are under obligation by law to provide access to inspectors.

No changes were made to the NRC Staff Assessment based on this comment.

#### 5. The NJ Program Fails to Satisfy Compatibility Criterion 23

SMC commented that many of NJ's regulations are aimed specifically and uniquely at SMC's Newfield site, and provided several examples to support its comment. SMC stated that NJ acknowledged in its response to SMC comments on the State's proposed regulations that the stand-alone limits on radioactive releases to the surface waters affect only one facility in the State. SMC believes that this acknowledgment, coupled with the more stringent license termination provisions, demonstrates that NJ's regulations qualify as "special legislation" because it appears to apply only to the Newfield site. SMC claims the regulations are to prevent SMC from disposing of the licensed materials on site for license termination and decommissioning. SMC comments that the State violated the NJ State Constitution, art. IV § 7, ¶ 7, which provides that "[n]o general law shall embrace any provision of a private, special or local character," See *also, Phillips v. Curiale, 128 N.J. 608, 627 (1992)*. For these reasons, SMC concludes the NJ Program fails to meet Criterion 23 for fair and impartial administration of regulatory law and particularly does not formulate "rules of general applicability" but its decommissioning rules are, instead, single-purpose legislation aimed exclusively at SMC.

#### NRC Staff Response

Criterion 23 is related to State practices for assuring the fair and impartial administration of regulatory law, including the provision for public participation where appropriate. The specific requirements under Criterion 23 are that the State incorporates procedures for: (1) formulation of rules of general applicability; (2) approving or denying applications for licenses or authorization to possess and use radioactive materials; and (3) taking disciplinary actions against licensees.

SMC's comments express their concern that NJ fails to meet Criterion 23 by enacting single-purpose legislation aimed exclusively at SMC. Agreement States must have a regulatory program in place that will cover all types of uses of the radioactive material or activities that a State assumes regulatory authority over in their Agreement. NRC requires the States to have this regulatory program in place even if there is only one licensee in the State currently licensed for a specific radioactive material or activity. The State regulations would apply to any material licensee that submits a request for license termination and subsequently begins decommissioning of its site. NRC's review found the State's radioactive material program and regulations adequate to protect public health and safety and compatible with NRC's regulatory program. NRC has not received any evidence, such as a State court rule, to indicate that NJ's regulatory program cannot be implemented fairly and impartially. Questions regarding whether a State complied with State law when promulgating their regulations should be addressed through the State's administrative process.

Based on NRC's review of NJ legislative authority and regulation, NRC concluded that NJ has adequate legislative authority for assuring the fair and impartial application of regulatory law.

No changes were made to the NRC Staff Assessment based on this comment.

#### 6. The NJ Program Fails to Satisfy Criterion 25

SMC commented that the NJ program fails to satisfy NRC Criterion 25 in that NJ has not sought to make "appropriate arrangements" with NRC to ensure there will be no interference with the processing of license applications by reason of the transfer. SMC stated that they filed a proposed decommissioning plan which is currently under review by NRC, and claims that instead of ensuring the smooth processing of the decommissioning plan, NJ has opposed it at every opportunity. SMC examples of NJ's interference include: (1) the State's requesting a hearing, and raising numerous contentions against approval of the SMC decommissioning plan at the Newfield site; (2) NJ's challenging in court NRC's decommissioning guidance in NUREG-1757 ("Consolidated Decommissioning Guidance"); and (3) NJ filing a petition for rulemaking with NRC to rescind the NRC guidance document.

#### NRC Staff Response

Criterion 25 addresses the transition between NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications by reason of the transfer. The intent of this criterion is to ensure that licensees can continue to operate without interference with or interruption of licensed activities after the effective date of the Agreement.

NRC's review confirmed that State Statute N.J.S.A. 26:2D-9(k) contains a provision that provides for recognition of existing NRC and Agreement State licenses. NJDEP BER Procedure 3.08, "License Transition from NRC to New Jersey," addresses the transfer of NRC licenses to the State. Upon completion of the Agreement, all active NRC licenses issued to facilities in NJ will be recognized as NJDEP licenses. This will ensure a smooth transition in authority from NRC to NJ so that licensees can continue to operate without interference with or interruption of licensed activities. NJ will continue any licensing actions that are in progress at the time of the Agreement and make the final decision on all pending licensing actions. Furthermore, since NRC will be relinquishing its regulatory authority over the radioactive materials covered by the NJ Agreement, NRC would not have regulatory authority to continue processing licensing actions after the Agreement goes into effect.

NRC recognizes that NJ has taken several actions to challenge SMC's proposed decommissioning plan and NRC's decommissioning guidance document. NRC regulations at 10 CFR Part 2 provide for the opportunity for hearings on licensing actions and allow petitions for rulemaking. As such, NJ is entitled to take these actions. NJ's individual actions while SMC is under NRC regulatory authority have no bearing on whether NJ satisfies Criterion 25. Based on NRC review of NJ's statutory authority, regulations, and BER Procedure 3.08, NRC concluded that NJ has adequate authority and processes to ensure that there will be no interference with, or interruption of, licensed activities or the processing of licensed applications because of the transfer of regulatory authority.

No changes were made to the NRC Staff Assessment based on this comment.

B. The New Jersey Radiation Protection Program is not Satisfactory Under the NRC Implementation Standards

SMC commented that the NJ program will not be found to be “satisfactory” in subsequent periodic reviews of the State program. SMC commented that NRC would not find the NJ program “satisfactory” under the NRC Integrated Materials Performance Evaluation Program (IMPEP) evaluation criteria because: (1) the numerous existing inconsistencies between NJ’s regulations and NRC’s; (2) NJ’s regulations being applicable to “all persons” would create duplication with NRC regulations because it would cover persons remaining licensed by NRC; (3) NJ’s regulations would supersede NRC’s decommissioning dose limits for NRC reactor licensees; and (4) NJ lacks statutory authority for all elements of its source material program, giving the example of a difference between “radioactive materials,” as defined in NRC’s regulations, and “sources of radiation” that the NJ statute authorizes the NJDEP to regulate. SMC believes NRC’s definition includes additional safety aspects related to source material that are not covered under the NJ statute.

SMC also commented that while considering a State program against the IMPEP standards prior to entering into an agreement is a discretionary adjunct to the evaluation process, there should be no obvious issues at the time the Agreement is implemented that would be found to lead to program unacceptability when NRC performs its first inspection. Such obvious issues are well in evidence in the NJ program.

NRC Staff Response

SMC refers to NRC’s IMPEP evaluation criteria in Management Directive 5.6, “Integrated Materials Performance Evaluation Program.” Under IMPEP, NRC verifies that Agreement State programs continue to be adequate to protect public health and safety and compatible with NRC’s program. SMC’s comment is that NJ’s existing regulations are not compatible with the NRC regulatory framework. Compatibility of regulations and the specific compatibility of NJ’s regulations were discussed in detail in the response to SMC comment A.2., under Specific Comments. Again, NRC has determined that NJ’s regulations are adequate to protect public health and safety and compatible with NRC’s regulatory program.

SMC also commented that the NJ regulations applying to “all persons” will be duplicative because it will include NRC licensees. Section 274 of the Atomic Energy Act of 1954, as amended, (AEA) only allows States to assume regulatory authority over radioactive materials or activities specified in their Agreement. Section 274(c)(1) of the AEA also requires NRC to retain regulatory authority over specified activities that include nuclear power reactors. The letter and final Application for Agreement submitted by the Governor of New Jersey specifically states the categories of materials and specific authorities that NJ wishes to regulate. Furthermore, N.J.S.A. 26:2D-91 provides authority for Agreements with Federal government and assumption of regulatory authority by the State, to regulate sources of radiation. NJ regulations, in N.J.A.C. 7:28-6.1(b), specifically states that “The Department does not regulate nuclear reactors...Insofar as the incorporated rules refer to those facilities and/or materials previously referenced, those references are not incorporated nor does any cross references include those facilities and/or materials.” These provisions clarify that NJ’s use of the phrase “all persons” is not duplicative because NJ lacks regulatory authority over NRC licensees. The State phrase “all persons” can only refer to persons under NJ regulatory authority.

As to the differences in definitions that SMC references, States can regulate non-AEA radioactive material. Examples of these radiation/radioactive materials include x-ray machines and diffuse naturally-occurring radioactive material. A State's definitions for radioactive material covered under the State program may be different than NRC regulatory definitions as a result of this broader regulatory authority.

No changes were made to the NRC Staff Assessment based on this comment.

C. Even if NJ becomes an Agreement State, the NRC Can and Should Retain Jurisdiction Over the Newfield Site and its Decommissioning

SMC commented that should NRC decide to enter into the proposed Agreement with NJ, NRC has the power to exclude the Newfield site from the transfer of authority to the State. SMC stated that "This is explicitly contemplated by the policy embodied in Criterion 25, which directs that appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications by reason of the transfer." SMC also indicated that exclusion of the Newfield site from the transfer of authority to NJ is also consistent with notions of fundamental fairness and efficiency and is consistent with an NRC Appeal Board decision regarding Kerr McGee's West Chicago site in Illinois (*Kerr-McGee Chemical Corporation* (West Chicago Rare Earths Facility), ALAB-944, 33 N.R.C. 81, 101-02 (1991), *vacated as moot*, CLI-96-2, 43 NRC 13 (1996)).

NRC Staff Response

Upon the effective date of a State Agreement authorized under Section 274 of the AEA, NRC relinquishes regulatory authority and the Agreement State assumes regulatory authority over the radioactive materials and activities specified in the Agreement. The legislative history for this Statutory provision specifically states that Congress did not intend to allow concurrent regulatory authority over licensees for public health and safety. If the NJ Agreement is approved by the Commission, upon the effective date of the Agreement, all NRC licensees within the categories of materials for which the State requested authority will transfer to the State.

Section 274m. of the AEA allows for NRC to retain authority based on common defense and security; NRC has used this authority to implement security regulatory requirements for certain categories of radioactive material licensees and retain regulatory authority over conversion facilities in Agreement States. However, the SMC site does not raise these common defense and security concerns.

The *Kerr-McGee* case SMC cited does involve a complex decommissioning site that was affected by the transition of a NRC license to a new Agreement State. However the case does not have precedence in this matter. The Commission terminated the Kerr-McGee proceeding as moot and vacated the previous Licensing and Appeals Boards' decisions after the parties reached a settlement to dispose of the mill tailings material off-site. In vacating the decisions, the Commission eliminated as precedent all three underlying decisions in the proceedings and specifically stated that:

In these circumstances, and because these unreviewed Board decisions involve complex questions and vigorously disputed interpretations of agency provisions for disposal of byproduct material, the Commission as a policy matter chooses to

vacate and thereby eliminate as precedent all three underlying decisions in this proceeding. This will permit any similar questions that may come up to be considered anew, without the binding influence of an apparently controversial Appeal Board decision that the Commission has not had the occasion to review.

By vacating the decisions, the Commission does not intimate any opinion on their soundness. Without engaging in a full inquiry into the merits—which no party any longer requests, and the Commission sees no compelling reason to undertake on its own—the Commission cannot properly evaluate the analyses of the Licensing and Appeal Boards (*In the Matter of Kerr-McGee Chemical Corporation*, CLI-96-2, 43 NRC 13 (1996)).

Please see the response to comment A.6, above, for a discussion of Criterion 25.

No changes were made to the NRC Staff Assessment based on this comment.

## **Miscellaneous Comments**

### Summary of Comments

1. A regulatory and nuclear consultant, Jim Lieberman, submitted a comment as to whether the State of NJ, upon approval of the Agreement, will honor past NRC license terminations at the 25 mrem per year standard without requiring terminated NRC licensees to conduct further remediation to meet the lower standards under NJ regulations. Mr. Lieberman suggested that NRC condition the Agreement giving full credit to past NRC license terminations unless there was a significant threat to public health and safety.

### NRC Staff Response

The NJ regulations, N.J.A.C. 7:28-12.4(d), do not allow the imposition of new standards on already approved decommissioning/remediation plans due to a revision to established remediation standards unless the difference between the two standards differs by an order of magnitude. Given that the remediation standard in NJ regulations (15 mrem per year) and NRC regulations (25 mrem per year) do not differ by an order of magnitude, this regulation does not appear to give NJ a basis to revisit prior NRC license terminations under this regulation. However, NJ does have the authority to take appropriate regulatory action if the State determines there is a significant threat to public health and safety at a decommissioned site.

No changes were made to the NRC Staff Assessment or Agreement based on this comment.

2. Gregory R. Reinhard, MBA, DVM, Merck & Co., Inc. commented that the State fees that will be charged to NJ licensees are exorbitant at “additional use sites.” Merck supports the rationale whereby states can assume regulatory authority from NRC but feels that the significant increase in fees for “additional use sites” are not justified.

### NRC Staff Response

In reviewing a State’s request to enter into an Agreement, NRC evaluates the proposed program to ensure that the State has the funding and staffing levels to manage an

Agreement State program. However, the State's radioactive material licensing fees are not a matter of adequacy and compatibility. The State establishes its own methods of funding, and decides the dollar amount of fees charged to licensees.

No changes were made to the NRC Staff Assessment based on this comment.

**ENCLOSURE 3**

**NRC STAFF ASSESSMENT  
OF THE NEW JERSEY PROGRAM**

**ASSESSMENT OF THE PROPOSED  
NEW JERSEY PROGRAM FOR THE REGULATION OF AGREEMENT MATERIALS  
AS DESCRIBED IN THE REQUEST FOR AN AGREEMENT**

This Assessment examines the proposed State of New Jersey Program with respect to the ability of the program to regulate the possession, use, and disposal of radioactive materials subject to the Atomic Energy Act of 1954 (Act), as amended.<sup>1</sup> This Assessment was performed using the criteria in the Commission's Policy Statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (referred to below as the "criteria")<sup>2</sup> using the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700 "Processing an Agreement." Each criterion, and the staff assessment related thereto, is addressed separately below.

OBJECTIVES

1. **Protection. A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.**

The proposed Agreement State Program for the State for regulating radioactive materials is located in the Bureau of Environmental Radiation (BER) within the New Jersey Department of Environmental Protection (NJDEP). NJDEP is a cabinet-level department with its commissioner reporting directly to the Governor of New Jersey.

NJDEP has the statutory authority to establish the Agreement State Program and to implement it by the Radiation Protection Act (N.J.S.A. 26:2D-1), the Administrative Procedures Act (N.J.S.A.52:14B-1 et seq.), and the Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act.

The authorities to issue, amend, suspend or revoke licenses; place conditions and to issue orders; or assess administrative fines is vested by Statute in the Radiation Protection Act, N.J.S.A. 26:D-7 and 26:D-9.

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<sup>1</sup>According to paragraph (a) of Section 274, the radioactive materials subject to the Act are byproduct, source and special nuclear materials.

<sup>2</sup>U.S. Nuclear Regulatory Commission (NRC) Statement of Policy published in the *Federal Register* (FR), January 23, 1981 (46 FR 7540-7546), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the FR, July 21, 1983 (48 FR 33376).

NRC staff verified that the State's Agreement State Program design for distributing regulatory responsibilities to the program staff is similar to designs used successfully in other Agreement States, and that all necessary program elements have been addressed.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

## RADIATION PROTECTION STANDARDS

2. Standards. **The State regulatory program shall adopt a set of standards for protection against radiation which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.**

In conjunction with the rulemaking authority vested in the New Jersey Commission on Radiation Protection by New Jersey Statute 26:2D-7 of the Radiation Protection Act, BER has the requisite authority to promulgate rules for protection against radiation.

NRC staff verified that the State adopted the relevant NRC regulations in Title 10 Code of Federal Regulations (CFR) Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150 into State regulations, New Jersey Administrative Code (N.J.A.C.) Title 7 Section 28, Radiation Protection Programs. The State has adopted an adequate and compatible set of radiation protection regulations that apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

3. Uniformity of Radiation Standards. **It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.**

The State, by statute, must promulgate and enforce rules for the regulation of byproduct, source, and special nuclear material that are in accordance with Section 274 of the Act, as amended. NRC staff verified that the State adopted regulations compatible with 10 CFR Part 20, "Standards for Protection Against Radiation."

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

4. Total Occupational Radiation Exposure. **The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.**

NRC staff verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Part 20, including Subpart C, the occupational dose limits and Subpart D, the dose limits to individual members of the public. State licensees are required to consider the radiation doses to individuals from all sources of radiation, except background radiation and radiation from medical procedures. Like NRC licensees, State licensees are required to consider the radiation dose whether the sources are licensed or unlicensed.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

5. Surveys, Monitoring. **Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.**

NRC requires surveys and monitoring pursuant to Subpart F of 10 CFR Part 20. NRC staff verified that the State has adopted regulations compatible with 10 CFR Part 20 Subpart F. Therefore, State licensees are required to conduct surveys and personnel monitoring to the same standards required of NRC licensees.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS:

ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

6. **Labels, Signs, Symbols. It is desirable to achieve uniformity in labels, signs and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.**

NRC staff verified that the State has adopted regulations compatible with the NRC regulations in Subpart J of 10 CFR Part 20; therefore, the radiation labels, signs, symbols, and the posting and labeling requirements in the State regulations are compatible with those contained in the NRC regulations.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

7. **Instruction. Persons working in or frequenting restricted areas shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, Section 19.16 and to be represented during inspections as specified in Section 19.14 of 10 CFR 19.**

NRC staff verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Part 19, "Notices, Instructions, and reports to Workers; Inspection and Investigations."

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

8. **Storage. Licensed radioactive material in storage shall be secured against unauthorized removal.**

NRC staff verified that the State has adopted regulations compatible with the NRC regulations in Subpart I of 10 CFR Part 20. These regulations address security of stored material and control of material not in storage.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

9. **Radioactive Waste Disposal. (a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority. Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR Part 20. The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.**

NRC staff confirmed that the State has adopted regulations that are compatible with the NRC regulations in Subpart K of 10 CFR Part 20. These regulations deal with general requirements for waste disposal and are applicable to all licensees.

The staff concludes that Criterion 9(a) is satisfied.

**(b) Land Disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons, which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR Part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (Section 151(a)(2), Pub. L. 97-425).**

NRC staff verified that the State has adopted regulations containing licensing requirements for land disposal of radioactive waste received from other persons that are compatible with the applicable technical definitions, performance objectives, technical requirements, and applicable supporting sections set forth in 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste."

The staff concludes that Criterion 9(b) is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710,

ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

10. Regulations Governing Shipment of Radioactive Materials. **The State shall, to the extent of its jurisdiction, promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U. S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.**

NRC staff verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Part 71, "Packaging and Transportation of Radioactive Material." The State's regulations specifically exempt areas of exclusive NRC jurisdiction.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

11. Records and Reports. **The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.**

NRC staff verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150. The records and reports referenced in Criterion 11 are regulatory requirements in these parts. The State has adopted the necessary record and reporting requirements.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

12. Additional Requirements and Exemptions. **Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional**

**requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.**

NRC staff verified that the State has adopted a regulation that is compatible with 10 CFR 30.34 and 40.41, Terms and conditions of licenses, in N.J.A.C. 7:28-51.1 and 7:28-58.1, respectively. The State regulations provide the radiation control agency authority to impose, by order or license condition, additional health and safety requirements beyond the requirements specified in law and in the rules. The agency also has legal authority to grant reasonable and necessary exceptions to the regulatory requirements, either by order or by license condition.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

PRIOR EVALUATION OF USES OF RADIOACTIVE MATERIALS

13. **Prior Evaluation of Hazards and Uses, Exceptions. In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards, and the capability of the user or possessor prior to his receipt of materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the processor and user. These categories fall into two groups: those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating specific use.**

The State has adopted regulations containing regulatory requirements for applying for and issuing licenses that are compatible with NRC's regulations.

NRC staff confirmed that the State's regulations provide that only NRC may issue a license authorizing the distribution of Agreement materials that will subsequently be exempt from regulatory control.

Since Criterion 13 was adopted, the Commission has determined that the regulatory authority to conduct safety evaluations of sealed sources and devices may be retained

by NRC, unless the State requests assumption of the authority and has in place an adequate and compatible program to implement the authority. The State has decided not to seek authority for evaluation of sealed sources and devices.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

14. **Evaluation Criteria. In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing regulatory guides for various categories of licensed activities.**

NRC staff determined that the State has established a series of procedures, checklists, and forms to be used in evaluating proposals for radioactive materials use. These will be used in addition to the licensing guidance in the NRC's NUREG-1556 series, entitled "Consolidated Guidance About Materials Licenses." In addition, the State developed administrative licensing procedures that define the review process for a new license application, amendment, renewal, and license termination. The State licensing procedures are similar to NRC procedures.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

15. **Human Use. The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.**

NRC staff verified that the State has adopted compatible regulations to the NRC regulations in 10 CFR Part 35, "Medical Use of Byproduct Material;" therefore, the State's regulations include training and experience requirements for use of radioactive material that are equivalent to the NRC requirements.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

## INSPECTION

16. Purpose, Frequency. **The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.**

NRC staff confirmed that the State has statutory authority to conduct inspections of licensees. The State has adopted regulations compatible with equivalent parts of the NRC regulations containing provisions relating to inspections and tests.

The State has adopted a schedule for inspection of licensees at least as frequent as the schedule used by NRC, established in Inspection Manual chapter 2800, "Materials Inspection Program." The State staff has developed internal procedures and accompanying forms for the inspection areas that cover scheduling, preparation, performance basis, tracking and documentation of inspection results. The State inspection procedures are similar to NRC procedures.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

17. Inspections Compulsory. **Licensees shall be under obligation by law to provide access to inspectors.**

NRC staff confirmed that State law provides authority for radiation control program inspectors to enter public or private property at all reasonable times for the purpose of investigating conditions related to radiation use.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710,

ML090510711, ML090510712, and ML090770116). State Statute: 26:2D-9. State Regulations N.J.A.C. Title 7 Chapter 28.

18. Notification of Results of Inspection. **Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.**

NRC staff determined that the State has adopted procedures to convey a copy of the formal inspection reports to the applicable licensees, both when violations are found and when no violations are found. The State's procedures identify the responsible staff and specify the time limits for preparing the inspection reports, the process for management reviews and approvals, and provide instructions for distribution of the reports to the licensees and to the State's official files.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

#### ENFORCEMENT

19. Enforcement. **Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.**

NRC staff confirmed that the State is authorized by law to enforce the State's regulations using a variety of sanctions, including the imposition of administrative fines; the issuance of orders to suspend, modify or revoke licenses; and any other action deemed appropriate by the Program. The Program may assess civil penalties in accordance with State Law and Department regulations.

The Program has adopted policies and procedures to implement the enforcement authority. The State enforcement procedures are similar to NRC procedures with regard to the use of severity levels for violations.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statutes: 26:2D-1, 26:2D-2,

26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2, 26:2D-13, 26:2D-22, 26:2D-23.4, 26:2D-36, 26:2D-57, 26:2D-77. State Regulation: N.J.A.C. 7:28-2.13.

## PERSONNEL

20. **Qualifications of Regulatory and Inspection Personnel. The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspections of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments (their selection, use and calibration), laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State regulatory staff may need to be supplemented by consultants of other State agencies with expertise in geology, hydrology, water quality, radiobiology and engineering disciplines.**

**To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life science, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training - radiation protection.**

**It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which are out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.**

**The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in the field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more**

**standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, the trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories, proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.**

**It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.**

Based on the review of the organizational charts and position descriptions for BER, the BER training and qualification plan, and the curricula vitae for the current staff members, NRC staff concludes that BER has a staffing plan that provides a sufficient number of adequately trained and qualified technical staff.

a. Assessment of the Agreement Materials Staffing

There are about 500 NRC specific licenses in the State. The State currently conducts a licensing and inspection program for about 500 naturally-occurring or accelerator-produced radioactive material (NARM) users. About 300 of these NARM users currently have an NRC license. When the NRC and State licenses are combined, there will be approximately 700 specific licenses in New Jersey. Additionally, there are over 400 general license registrations.

The staff of the Radioactive Materials Section (RMS), in BER, will be responsible for implementing the majority of the Agreement State Program. The Radiological Assessment Section, in BER, will be responsible for the remainder of the Agreement State Program, including decommissioning, low-level radioactive waste disposal site regulation, and will provide assistance with nuclear medicine licensees, Increased Controls and general license registration.

The State conducted an analysis of the expected workload to establish an appropriate staffing plan. The State estimates that there will be approximately 700 specific licenses after the NRC and State licenses are combined. The State has determined that 13.25 full-time equivalent (FTE) is adequate for operating the Agreement State Program. This projection is based on data from the NRC, Agreement States, and BER's own internal information. NRC staff reviewed the State's analysis and concludes that the State adequately analyzed its program needs in determining an appropriate staffing plan. The State's staffing plan of 13.25 FTE for the Agreement State Program will be adequate to handle the anticipated workload.

At the time of the NRC review of the application, there was one vacant technical position in BER to support the Agreement State Program. This position has been filled and the individual was on staff April 15, 2009. There are currently 10.5 FTE (technical staff) devoted to support the Agreement State Program, which includes the RMS Supervisor. The RMS Supervisor will provide the day-to-day supervision of the Agreement State Program. The Supervisor plans on devoting 100 percent of his time to the Agreement State Program, including management review of licensing and inspection actions, personnel responsibilities, rule development, and accompaniment of inspectors for annual management review. The BER Bureau Chief will devote 35 percent of her time to the Agreement State Program, including management review of certain actions, personnel responsibilities, and rule development. There are two staff members that provide 2.0 FTE of administrative support to the program and one staff member that will devote 40 percent of her time providing management assistance to the Agreement State Program. The staff will work in all aspects of the materials program, including licensing, inspection, enforcement, emergency response, and rule development. NRC staff concludes that BER has an adequate number of staff to transition to and meet the anticipated needs of the Agreement State Program.

The staff concludes that criterion 20(a) is satisfied.

b. Assessment of Staff Qualifications

NRC staff considered the qualifications of the individuals currently on the BER staff that would be involved in the Agreement State Program and the procedures for training and qualifying new staff members.

Under the proposed Agreement, BER will implement the Agreement State Program. The BER Bureau Chief has a Bachelor of Arts degree in Biology and has completed graduate course work in Radiation Science. She has 28 years of experience with NJDEP, first as a radiation physicist and then as a manager, within a variety of program areas including radioactive materials, decommissioning/site remediation, radioanalytical laboratory program, and emergency response.

The RMS Supervisor will be responsible for the Program's administration and will provide the immediate day-to-day supervision of the Agreement State Program. The RMS Supervisor has a Bachelor of Science in Biology, a Master of Science in Radiation Science, and a Nuclear Medicine Certification. He has about 25 years of experience in all aspects of the NJDEP programs – licensing and inspection of NARM licenses, radiation measurements, calibration, laboratory design, and emergency response. Additionally, he has experience as a nuclear medicine technologist, responsible for the preparation and use of radiopharmaceuticals for diagnostic and therapeutic purposes and the operation of clinical nuclear medicine instruments.

All other staff members have a Bachelor of Science degree in one of the following subject areas: environmental science, nuclear engineering, earth sciences, chemistry, physics, and biochemistry, with one person also possessing a Bachelor of Science degree in mathematics. Additionally, five of these staff

members have a Master of Science in Radiation Science, one staff member has a Master of Business Administration, and another has begun graduate work in environmental policy studies.

The majority of the BER technical staff has extensive health physics and radiation science experience within NJDEP, as well as work experience in the private sector. Staff has work experience in nuclear engineering; as a radiation safety officer in medical and radiopharmaceutical facilities, environmental protection and remediation, and with radiopharmaceutical production. The technical staff has completed or is scheduled to complete the NRC-recommended core courses by the effective date of the Agreement, or has received waivers from BER based on prior training and experience. The individual hired in April 2009 is scheduled to complete three of the NRC-recommended core courses by the effective date of the Agreement. This individual may need up to 2 years to complete all of the NRC-recommended core courses due to availability and scheduling of classes.

BER has maintained a strong NARM program for many years regulating approximately 500 NARM licensees. Consequently, the majority of staff currently with the Program has extensive licensing and inspection experience. The BER technical staff has accompanied NRC staff on inspections of NRC licensees in the State and is continuing to accompany NRC on more inspections in preparation for the transition to an Agreement State.

NRC staff believes that the BER technical staff identified by the State to work in the Agreement State Program are trained in accordance with the BER plans, have sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and techniques of inspecting licensed users of radioactive materials.

NRC staff concludes that BER has a sufficient number of adequately trained staff to transition to the Agreement State Program and to meet program needs.

The staff concludes that criterion 20(b) is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116).

21. Conditions Applicable to Special Nuclear Material, Source Material and Tritium. **Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms, (1) transfers of special nuclear material, source material and tritium, and (2) periodic inventory data.**

NRC staff did not identify any aspects of the proposed Agreement State Program that could potentially interfere with duties imposed on a holder of materials by NRC. In addition, the State's regulations specifically exempt areas of exclusive NRC or other

Federal jurisdiction from State regulation. The staff is satisfied that the State will not interfere with duties imposed on the holder of materials by NRC.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

22. **Special Nuclear Material Defined. Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium 233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:**

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams PU)}}{200} = 1$$

NRC staff determined that the State's definition of special nuclear material in quantities not sufficient to form a critical mass in N.J.A.C 7:28-62.1 is compatible with that of the Commission's.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

#### ADMINISTRATION

23. **Fair and Impartial Administration. State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:**
- a. **Formulation of rules of general applicability;**
  - b. **Approving or denying applications for licenses or authorization to process and use radioactive materials; and**
  - c. **Taking disciplinary actions against licensees.**

NRC staff confirmed that BER is bound by general statutory provisions with respect to providing the opportunity for public participation in rulemaking, licensing actions, and disciplinary actions. These general statutory provisions also apply to the protection of personnel radiation exposure records from public disclosure, maintaining the confidentiality of alleged, and administrative and judicial requirements for requesting and holding hearings on enforcement matters.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statute: N.J.S.A. 52:14B-1 and 2 et seq. and N.J.S.A. 26:2D-7. State Regulation: N.J.A.C. Title 7 Chapter 28 and N.J.A.C. 7:1D-1.1

24. **State Agency Designation. The State should indicate which agency or agencies will have authority for carrying on the program and should provide the NRC with a summary of that legal authority. There should be assurances against duplicate regulation and licensing by State and local authorities, and it may be desirable that there be a single or central regulatory authority.**

NRC staff determined that NJDEP is designated by State Statute 26:2D-9 to be the lead agency for carrying out the terms of the proposed Agreement, which will assure against duplicate regulations or licensing by State and local authorities. NRC staff determined that the State regulations specifically exclude any areas in which the jurisdiction of NRC or another Federal agency is exclusive, and also give sufficient assurance against duplicate regulation between the State and NRC in the regulation of radioactive materials under the Agreement.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statute: 26:2D-3, 26:2D-6, 26:2D-8, 26:2D-9 and 26:D-17.

25. **Existing NRC Licenses and Pending Applications. In effecting the discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect, for an appropriate period of time under State Law, existing NRC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier reexamination or termination of the license.**

NRC staff confirmed that State Statute 26:2D-9 contains a provision that provides for recognition of existing NRC and Agreement State licenses. State procedure BER 3.08, "License Transition from NRC to New Jersey," addresses the transfer of NRC licenses to the State. N.J.A.C. 7:28-62.1 provides a process for recognition of other Agreement State licenses and N.J.A.C. 7:28-64.6 establishes the fees for reciprocity of other State licenses.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, ML090770116). State Regulation N.J.A.C. Title 7 Chapter 28.

26. Relations with Federal Government and Other States. **There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.**

NRC staff verified that the proposed Agreement commits the State to cooperate with NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to ensure that the State will continue to be compatible with the NRC's program for the regulation of radioactive materials covered by the Agreement.

In a revised Policy Statement on Adequacy and Compatibility of Agreement State Programs (published September 3, 1997 at 62 FR 46517), the Commission determined that providing reports to NRC of Agreement State licensee incidents, accidents and other significant events is a matter of compatibility. The State has adopted procedures to provide such reports to NRC.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statute: N.J.S.A. 26:D-9. State Regulations: N.J.A.C. Title 7 Chapter 28.

27. Coverage, Amendments, Reciprocity. **An amendment providing for discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State may relate to any one or more of the following categories of materials within the State, as contemplated by Public Law 86-373 and Public Law 95-604:**
- a. **Byproduct material as defined in Section 11e(1) of the Act,**
  - b. **Byproduct material as defined in Section 11e(2) of the Act,**
  - c. **Byproduct material as defined in Section 11e(3) of the Act,**

- d. **Byproduct material as defined in Section 11e(4) of the Act,**
- e. **Source material,**
- f. **Special nuclear material in quantities not sufficient to form a critical mass,**
- g. **Low-level wastes in permanent disposal facilities, as defined by statute or Commission rules or regulations containing one or more of the materials stated in a, c, and d above but not including byproduct material as defined in Section 11e(2) of the Act;**

**but must relate to the whole of such category or categories and not to a part of any category. If less than the five categories are included in any discontinuance of jurisdiction, discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State of the others may be accomplished subsequently by an amendment or by a later Agreement.**

**Arrangements should be made for the reciprocal recognition of State licenses and NRC licenses in connection with out-of-jurisdiction operations by a State or NRC licensee.**

NRC staff verified that the proposed Agreement provides for NRC to relinquish, and the State to assume, regulatory authority over the types of material defined in categories a, c, d, e, f, and g above.

Since this criterion was adopted, the Commission has determined that the Agreement States may assume the authority to evaluate the safety of sealed sources and devices to be distributed in interstate commerce as a separate portion of the Agreement, or to allow NRC to retain that authority. The State has chosen not to assume that authority.

The proposed Agreement stipulates the desirability or reciprocal recognition of NRC and other Agreement State licenses, and commits NRC and the State to cooperate to accord such reciprocity. The State's regulations provide for the reciprocal recognition of licenses from other jurisdictions.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statute: N.J.S.A. 26:D2-9. State Regulations N.J.A.C. Title 7 Chapter 28.

28. **NRC and Department of Energy Contractors. The State should provide exemptions for NRC and DOE contractors which are substantially equivalent to the following exemptions:**
- a. **Prime contractors performing work for the DOE at U.S. Government-owned or controlled site;**
  - b. **Prime contractors performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;**

- c. **Prime contractors using or operating nuclear reactors or other nuclear devices in a U.S. Government-owned vehicle or vessel; and**
- d. **Any other prime contractor or subcontractor of DOE or NRC when the State and the NRC jointly determine (i) that, under the terms of the contract or subcontract, there is adequate assurance that the work there under can be accomplished without undue risk to the public health and safety; and (ii) that the exemption of such contractor or subcontractor is authorized by law.**

NRC staff verified that the State has adopted compatible regulations to NRC regulations in 10 CFR Parts 30, 40 and 70 including §30.12, §40.11, and §70.11 wherein the specified exemptions are contained. NRC staff concludes that the State regulations do provide for exemptions from the State's requirements for licensing of sources of radiation for NRC and DOE contractors or subcontractors in accordance with the criterion.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

#### STAFF CONCLUSION

NRC staff has reviewed the proposed Agreement, the certification by the State in the application for an Agreement in the letter dated October 16, 2008, from Governor Corzine to Chairman Klein, and the supporting information provided BER.

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

- (a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and
- (b) The Commission finds that the State program is in accordance with the requirements of Section 274o. and in all other respects compatible with the NRC's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The staff concludes that:

On the basis of this Assessment, the State of New Jersey meets the requirements of the Act. The Agreement State Program, as defined by the State statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the NRC's program and

adequate to protect public health and safety with respect to the radioactive materials covered by the requested Agreement.



## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE  
Governor

MARK N. MAURIELLO  
Acting Commissioner

Division of Environmental Safety and Health  
Radiation Protection and Release Prevention Element  
P.O. Box 415  
Trenton, New Jersey 08625-0415  
Phone: (609) 984-5636  
Fax: (609) 633-2210

May 26, 2009

Robert J. Lewis, Director  
Division of Materials Safety and State Agreements  
Mail Stop T8-E24  
US Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Mr. Lewis:

The purpose of this letter is to document a discussion between staff from the US Nuclear Regulatory Commission (NRC) and the NJ Department of Environmental Protection, Bureau of Environmental Radiation (NJ) regarding the status of the Naturally occurring and Accelerator produced Radioactive Material (NARM) waiver.

On August 7, 2009, the NRC will terminate the time limited waivers for all remaining non-Agreement States. At the time of the waiver termination, NJ will not have a signed agreement with the NRC. We understand that termination of the waiver means that the NRC will have jurisdictional authority over all discrete NARM until the effective date of the agreement.

The following items were identified and agreed to during the discussion:

1. The NRC will handle allegations and events for discrete NARM during this time period according to NRC policy. The NRC staff will be coordinating with NJ closely.
2. New Jersey will provide access to license files if needed for any events, enforcement, and allegations that might occur during this interim time period. In addition, a list of NJ licensees will be provided to the NRC.
3. After the expiration date of the NARM waiver, NJ will not issue licensing actions and understands that the NRC will also hold licensing actions during the last 30 days prior to the agreement.

4. If there is an urgent need or a public health and safety issue, the NRC will be taking action, as well as notifying NJ of such action.

Please notify our office if you are not in agreement with any of the four items listed above. New Jersey will continue to coordinate and cooperate with the NRC during this interim time period on any issues that might arise to ensure a smooth transition, minimize impact, and reduce the administrative burden on licensees.

Sincerely,  


Paul Baldauf, P.E.  
Assistant Director  
Radiation Protection and Release Prevention

c: Patricia Gardner, NJ DEP  
John Kinneman, NRC Region 1

June 25, 2009

Paul Baldauf, P.E., Assistant Director  
Radiation Protection and Release Prevention  
State of New Jersey  
Division of Environmental Safety and Health  
Radiation Protection and Release Prevention Element  
P.O. Box 415  
Trenton, New Jersey 08625-5636

Dear Mr. Baldauf,

Thank you for your letter dated May 26, 2009, to document a discussion between staff from the U.S. Nuclear Regulatory Commission (NRC) and the New Jersey Department of Environmental Protection, Bureau of Environmental Radiation (NJ). Staff of both organizations discussed the status of the Naturally Occurring and Accelerator Produced Radioactive Material (NARM) waiver, which expires on August 7, 2009.

NRC has reviewed your letter and would like to clarify one item, as NRC staff understands it. In item 3, you indicate that "After the expiration date of the NARM waiver, NJ will not issue licensing actions and understands that the NRC will also hold licensing actions during the last 30 days prior to the Agreement." NRC staff understands that by "licensing actions," NJ is referring to not issuing NARM licenses in its State during this interim period. NRC staff understands that if there are ongoing enforcement actions that were initiated while the licensee(s) were under NJ jurisdiction, prior to the expiration of the NARM waiver, NJ will continue with such actions. NRC will also use its discretion not to process NARM licensing requests prior to the anticipated effective date for the State Agreement, September 30, 2009.

If you have any questions as staff continues its work on the Agreement, please do not hesitate to contact me, or Torre Taylor, of my staff, at 301-415-7900 or by email at [torre.taylor@nrc.gov](mailto:torre.taylor@nrc.gov). I appreciate your staff's continued effort to coordinate and cooperate with NRC as we move forward in the review of your Agreement.

Sincerely,

Robert J. Lewis, Director */RA/*  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials  
and Environmental Management Programs

cc: Patricia Gardner, NJ Department of Environmental Protection  
John Kinneman, NRC Region I

**ENCLOSURE 5**

**NARM WAIVER EXPIRATION  
AND IMPACT ON NEW JERSEY AGREEMENT**

# NARM WAIVER EXPIRATION ON AUGUST 7, 2009 IMPACT ON NEW JERSEY AGREEMENT

## Background

The Energy Policy Act of 2005 (EPAct) became effective immediately upon signature by the President on August 8, 2005, and authorized the Commission to regulate naturally occurring and accelerator produced radioactive material (NARM) as defined in the amended definition of byproduct material in Section 11e(3) and (4) of the Atomic Energy Act. Many States regulated this material under their existing State radiation programs. The EPAct, in Section 651(e)(5), authorized the Commission to issue a waiver of the requirements in Section 651(e) to any entity with respect to these NARM materials for specified periods of time if the Commission determined that the waiver was in accordance with the protection of the public health and safety and the promotion of the common defense and security. The EPAct limited the waiver to a time period no longer than 4 years. The Commission determined that there was no basis to conclude that the NARM materials would not continue to be used in a manner that is protective of public health and safety while the waiver is in effect. The Commission then granted a waiver (70 FR 51581; August 31, 2005) from the requirements of Section 651(e) of the EPAct.

The waiver allowed the continued use of NARM, especially for medical purposes, and allowed the States to continue to regulate NARM until the Commission could codify new regulations for these materials. It also provided an opportunity for non-Agreement States that currently do not have Agreement State regulatory programs under Section 274b. of the Atomic Energy Act (AEA), as amended, to consider entering into an Agreement with the NRC.

Regulations to address the requirements of the EPAct were effective on November 30, 2007, and are referred to as the "NARM rule." As part of the NARM rule, NRC specifically allowed a transition period for licensees/applicants to submit license amendments or new license applications as needed for NARM. A Transition Plan was noticed in the *Federal Register* on October 19, 2007 (72 FR 59157). The purpose of the Transition Plan is to facilitate an orderly transition of regulatory authority with respect to the NARM materials. The NRC recognized that some States may be interested in becoming an Agreement State based on the passage of the EPAct. Therefore, the staff indicated in the Transition Plan that, "Every effort will be made to complete an Agreement as soon as practical, without compromising quality and completeness... If any Agreements cannot be completed before the waiver expires on August 7, 2009, the Commission may consider, on a case-by-case basis, options to limit the impact on affected users of 11e.(3) and 11e.(4) byproduct material in the States."

Once the waiver expires on August 7, 2009, all persons that possess NARM must be in compliance with NRC regulations. Licensees have 6 months to apply for necessary amendments and applicants have 12 months to apply for a new license. Many licensees already have authorizations on their license that are inclusive of byproduct materials and their uses so that an amendment may not be needed to specifically add NARM to the license.

## Discussion

As part of the normal process for the transition from NRC authority to an Agreement State, pursuant to Section 274b of the AEA, Region I will develop a plan to facilitate an effective and efficient Agreement State transition process. The plan will provide information regarding license

transfers, completion of inspections, etc. NRC typically accelerates inspections so that the new Agreement State does not have a backlog of inspections to conduct at the beginning of the Agreement. Events occurring before the effective date of the Agreement remain with the regulatory agency under which the event occurred until completion. Likewise, any ongoing enforcement action will be completed by the regulatory agency under whose authority the event occurred.

### **NARM Waiver Expiration**

NRC and New Jersey are working towards an effective date for the Agreement of no later than September 30, 2009. At this time, given where the review of the Agreement application is in the normal review process, it would be difficult to complete the Agreement prior to the expiration of the NARM waiver. Staff is already under an accelerated review process to complete the Agreement by no later than September 30, 2009. Additionally, there is a long lead time that is necessary to complete necessary inspections and to prepare about 500 license files for transfer. New Jersey staff is making similar preparations for the transition to becoming an Agreement State. Staff has been working with New Jersey to ensure a smooth transition during this interim time period and to minimize the impact on licensees located in New Jersey. Staff does not believe that this will be a major impact and that there will be no regulatory gap.

As of August 8, 2009, New Jersey's approximately 500 NARM licensees will be under NRC jurisdiction. All persons that possess byproduct material must be in compliance with NRC regulations, including reporting and recordkeeping requirements. The impact to New Jersey NARM licensees during this interim period will be minimal since the New Jersey regulations, on the effective date of the Agreement, are essentially the same as NRC regulations.

NRC will accelerate inspections so that no inspections are due right after the effective date of the Agreement. Additionally, staff has spoken with New Jersey staff and they will also try to accelerate inspections of NARM licensees so that no inspections will be due during this interim time period. NRC will respond to any events that might occur during this interim period. As a courtesy, NRC staff will ask licensees located in New Jersey to report events to New Jersey as well as NRC.

As mentioned previously, upon the expiration of the NARM waiver, licensees and applicants have 6 months and 12 months to submit necessary amendment requests and applications for a license, respectively. After the end of Phase 1 and Phase 2 of the Transition Plan in other States, NRC did not see a large number of licensing actions related to the NARM rule. Staff does not anticipate this to be any different for the expiration of the NARM waiver in New Jersey. NRC, as part of the normal process in transitioning New Jersey to an Agreement State, will not process any such licensing actions during the last 30 days prior to the effective date of the Agreement, unless there is an urgent need or a health and safety issue. Staff will be working closely with New Jersey regarding such licensing actions. New Jersey and NRC have agreed that the NARM licensees' files will stay in New Jersey and NRC will have access as needed during the interim period.

**Conclusion**

Based on the above discussion, staff believes that there will be minimal impact on New Jersey licensees because of this interim time period of about 7 weeks between the expiration of the NARM waiver and the effective date of the Agreement. NRC will have jurisdictional authority during this time and there will not be a regulatory gap. NRC and New Jersey have discussed the above during numerous meetings to ensure a clear understanding of the jurisdiction during this interim time period, and to ensure an efficient transition.

**ENCLOSURE 6**

**CURRENT MILESTONE SCHEDULE**

## PROCESSING SCHEDULE FOR NEW JERSEY AGREEMENT

Event	Scheduled Date
Receipt of Formal Request	10/21/2008
First Publication in <i>Federal Register</i>	5/27/2009
End of Public Comment Period	6/26/2009
NRC offices concur on final assessment and paper	7/30/2009
EDO sign paper	8/24/2009
Commission SRM Approving Agreement	9/16/2009
Signing of Agreement	Week of 9/21/2009
Effective Date of Agreement	9/30/2009

**ENCLOSURE 7**

**DRAFT LETTER FROM  
CHAIRMAN GREGORY B. JACZKO TO  
GOVERNOR JON S. CORZINE**

**DRAFT**

The Honorable Jon S. Corzine  
Governor  
State of New Jersey  
Trenton, New Jersey 08625

Dear Governor Corzine:

I am pleased to inform you that the U. S. Nuclear Regulatory Commission (NRC) has approved your request for an Agreement under which the NRC will discontinue and the State of New Jersey will assume regulatory authority over the acquisition, possession, use, transfer, and disposal of certain byproduct material, source material, special nuclear material in quantities not sufficient to form a critical mass, and the land disposal of byproduct material, source material, or special nuclear material waste received from other persons.

We are pleased with your interest in participating in the Agreement State program and look forward to the continued excellent relationship we have enjoyed with the State of New Jersey in the past.

Sincerely,

Gregory B. Jackzo

**ENCLOSURE 8**

**DRAFT  
FEDERAL REGISTER NOTICE OF  
AGREEMENT SIGNING**

**U. S. Nuclear Regulatory Commission**

**[NRC-2009-0142]**

State of New Jersey: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Agreement Between the NRC and the State of New Jersey

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of Agreement between the U.S. Nuclear Regulatory Commission and the State of New Jersey.

**SUMMARY:** This notice is announcing that on **[TBD - signature date]**, Gregory B. Jaczko, , Chairman of the U.S. Nuclear Regulatory Commission (NRC or Commission), and on **[TBD – signature date]** Governor Jon S. Corzine, of the State of New Jersey, signed an Agreement as authorized by Section 274b of the Atomic Energy Act of 1954, as amended (the Act). The Agreement provides for the Commission to discontinue its regulatory authority and for New Jersey to assume regulatory authority over the possession and use of byproduct material as defined in Sections 11e.(1), 11e.(3), and 11e.(4) of the Act, source material, special nuclear materials (in quantities not sufficient to form a critical mass), and the regulation of land disposal of byproduct, source, or special nuclear material waste received from other persons. Under the Agreement, a person in New Jersey possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the *Federal Register (FR)* and are codified in the Commission’s regulations as 10 CFR Part 150. The Agreement is published here as required by Section 274e of the Act.

**DATES:** The effective date of the Agreement is [TBD]

**ADDRESSES:** You can access publicly available documents, including public comments related to this notice using the following methods:

**NRC's Public Document Room (PDR):** The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

**NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS Accession numbers for the request for an Agreement by the Governor of New Jersey, including all information and documentation submitted in support of the request, and the NRC Draft Staff Assessment are: ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, ML090770116, and ML091400097.

**FOR FURTHER INFORMATION CONTACT:** Torre Taylor, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-7900; e-mail: [torre.taylor@nrc.gov](mailto:torre.taylor@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The NRC published the draft Agreement in the *FR* for comment once each week for 4 consecutive weeks on May 27, 2009 (74 FR 25283), June 3, 2009 (74 FR 26739), June 10, 2009 (74 FR 27572), and June 17, 2009 (74 FR 28728),

as required by the Act. The comment period ended on June 26, 2009. The Commission received six comment letters – two supporting the Agreement, two opposed, one that supported the rationale of States assuming regulatory authority but not the fee differences that will occur, and one general comment that did not express support or opposition. The comments did not affect the NRC staff's assessment, which finds that the New Jersey Agreement State program is adequate to protect public health and safety and compatible with the NRC's program. The proposed New Jersey Agreement is consistent with Commission policy and thus meets the criteria for an Agreement with the Commission.

After considering the request for an Agreement by the Governor of New Jersey, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the New Jersey Department of Environmental Protection, the NRC staff completed an assessment of the New Jersey program. The agency made a copy of the staff assessment available in the NRC's Public Document Room (PDR) and electronically on NRC's Web site. Based on the staff's assessment, the Commission determined on **[TBD-Date of SRM]**, that the proposed New Jersey program for control of radiation hazards is adequate to protect public health and safety, and compatible with the Commission's program.

Dated at Rockville, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 2009.

For the Nuclear Regulatory Commission.

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Annette L. Vietti-Cook,  
Secretary of the Commission

**AN AGREEMENT  
BETWEEN  
THE UNITED STATES NUCLEAR REGULATORY COMMISSION  
AND  
THE STATE OF NEW JERSEY  
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 (the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 *et seq.* (hereinafter referred to as the Act), to enter into Agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (2), (3), and (4) 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 New Jersey is authorized under The Radiation Protection Act, N.J.S.A. 26:2D-1, to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State of New Jersey certified on October 16, 2008, that the State of New Jersey (the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on **[date]** that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

WHEREAS, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, This Agreement is entered into pursuant to the provisions of the Act;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State acting on behalf of the State as follows:

**ARTICLE I**

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials;
5. Special nuclear materials in quantities not sufficient to form a critical mass; and
6. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

## ARTICLE II

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 materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;
5. 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;
6. The regulation of byproduct material as defined in Section 11e.(2) of the Act.

## ARTICLE III

With the exception of those activities identified in Article II.1 through 4, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

#### ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

#### ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

#### ARTICLE VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible.

The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

#### ARTICLE VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

#### ARTICLE VIII

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 judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

#### ARTICLE IX

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

Done at Rockville, Maryland, in triplicate, this [date] day of [month], [year].

FOR THE UNITED STATES NUCLEAR  
REGULATORY COMMISSION

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Gregory B. Jaczko, Chairman.

Done at Trenton, New Jersey, in triplicate, this [date] day of [month], [year].

FOR THE STATE OF NEW JERSEY

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Jon S. Corzine, Governor.