

POLICY ISSUE NOTATION VOTE

January 26, 2004

SECY-04-0008

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

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

PURPOSE:

Request Commission approval to publish the proposed amendment to the Agreement with the State of Utah in the Federal Register (FR) for public comment.

BACKGROUND:

Section 274b of the Act authorizes the Commission to enter into an agreement with the Governor of a State providing for the discontinuance of the regulatory authority of the Commission with respect to certain materials. In 1981, the Commission adopted the revised policy statement entitled, "Criteria for Guidance of States and Nuclear Regulatory Commission (NRC) in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (46 FR 7540; January 23, 1981), as amended by statements published on July 16, 1981, (46 FR 36969), and on July 21, 1983, (48 FR 33376), referred to hereafter as the "policy statement." Subsequently, staff adopted an internal procedure for applying the policy statement to the processing of a new agreement. The criteria and approaches in these documents form the basis for the staff's evaluation of the Utah request.

DISCUSSION:

By letter dated January 2, 2003, Governor Michael O. Leavitt requested that the Commission enter into an amendment to the Agreement with the State of Utah, as amended, (the Agreement) under Section 274b of the Atomic Energy Act of 1954, as amended (Act). The amendment would add authority to regulate 11e.(2) byproduct material and the facilities that

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generate such material (uranium mill tailings and uranium mills). Governor Leavitt certified that Utah has a program for the control of radiation hazards that is adequate to protect public health and safety within the State with respect to the materials covered by the proposed amendment. The Governor further certified that the State wishes to assume the regulatory responsibility for those materials. Copies of Governor Leavitt's letter and Chairman Meserve's response are attached (Attachments 1 and 2, respectively).

The Governor requested that the Commission discontinue its regulatory authority for 11e.(2) byproduct material and allow Utah to assume regulatory authority for such material under an amendment to the Agreement. The effective date of the amendment to the Agreement proposed by Utah was October 1, 2003. However, the current schedule is for the amended Agreement to become effective March 31, 2004. The NRC staff sent comments to Utah on its final amendment application by letter dated June 27, 2003 (ML031810623). By letter dated July 18, 2003 (ML032060090), Utah responded to the NRC comments and submitted revised sections of its amendment application. By letter dated December 23, 2003, Utah also provided additional information concerning staffing and training (Attachment 3). The text of the proposed amendment to the Agreement is included in the proposed FR Notice in Attachment 4. The Act requires the proposed amendment to the Agreement to be published in the FR once a week for four consecutive weeks.

Utah modified the Utah Radiation Control Act to implement an amended Agreement for 11e.(2) byproduct material (uranium milling). Utah amended the Utah Administrative Code to adopt compatible regulations for uranium milling and 11e.(2) byproduct material management. The last of these regulatory changes became effective October 7, 2002. The NRC staff reviewed and forwarded comments on these regulations to the Utah staff by letter dated June 28, 2002 (ML021790511). The NRC staff review of Utah's final regulations verified that Utah resolved these comments and that Utah's rules contain all of the provisions, with the one caveat for their groundwater provisions discussed below, that are necessary in order for Utah's regulations to be compatible with the regulations of the NRC on the effective date of the amended Agreement between the State and the Commission (ML023290240). The NRC staff also verified that Utah will not attempt to enforce regulatory matters reserved to the Commission.

Utah regulations differ from NRC regulations with respect to the groundwater protection requirements for 11e.(2) byproduct material. Utah has proposed to use its existing groundwater regulations in lieu of the groundwater protection requirements in Appendix A to 10 CFR Part 40. The staff considers this approach an alternative standard and has addressed this issue in a separate Commission paper (SECY-03-0025, ML030210558). By staff requirements memorandum dated April 21, 2003 (ML031110278), the Commission approved the staff approach of proceeding with the alternative standard evaluation process in parallel with the evaluation of the amended Agreement application. The alternative standard process must be completed prior to the staff making a final recommendation to the Commission on the amendment proposal. The NRC staff is evaluating the comments received on Utah's proposal to use alternative groundwater standards and plans to present its recommendation on the alternative standards to the Commission, along with its final recommendation on the amendment to the Agreement.

NRC staff determined that the Utah position descriptions for technical staff specify educational requirements consistent with the educational requirements for equivalent NRC staff. Utah also has a formal plan for the training and qualification of technical staff that provides assurance of staff competence equivalent to the assurance provided by NRC Inspection Manual, Chapter 1246. However, Utah does not plan to hire the three new staff to implement the amended Agreement (two professional/technical and one administrative) until within three months of the effective date of the Agreement. Utah has qualified staff to implement the amended Agreement in the current program and has committed to using these staff members for the amended Agreement activities until the new staff are fully trained. The Division of Radiation Control believes that radiation control program work in the other program areas will be only minimally impacted due to the increased responsibilities of these staff during the transition period. (See December 23, 2003 Letter in Attachment 3.)

The NRC staff believes that the Utah request for an amended Agreement meets the criteria set forth in Section 274 of the Act and in the policy statement. This conclusion is based on the NRC staff's draft assessment (Attachment 5) of the proposed program against the seven criteria (Criteria 29 through 36) specific to 11e.(2) byproduct material Agreements contained in the policy statement.

As required by Section 274e of the Act, the proposed FR Notice that includes a summary of the staff's draft assessment of the proposed Utah regulatory program for regulation of 11e.(2) byproduct material and the text of the proposed amendment to the Agreement (Attachment 4) will be published for four consecutive weeks in the FR. The staff plans to receive and address public comments and, when successfully resolved, propose Commission acceptance of the amendment to the Agreement. This plan allows the Commission to satisfy the requirements of the Act.

The staff plans to follow the same process for Utah as it did for Wisconsin and Oklahoma. For the Wisconsin and Oklahoma Agreements, staff published the proposed Agreements in the FR for public comment, in parallel with the Commission's review of the staff's draft assessment. The staff will include an analysis of the public comments in a final paper to the Commission recommending a decision on the amendment to Utah's Agreement.

COORDINATION:

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

RECOMMENDATIONS:

That the Commission:

1. Approve:

Publication of the FR Notice (Attachment 4) for four consecutive weeks.

2. Review:

The proposed Agreement between the State of Utah and the NRC pursuant to Section 274 of the Act (Attachment 4), and the draft of the NRC staff assessment of the Utah regulatory program for 11e.(2) byproduct material (Attachment 5), in parallel with the publication of the proposed Agreement in the FR.

3. Note:

- a. The staff will place a copy of the NRC Staff Draft Assessment (summarized in the FR Notice) in the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>, and into ADAMS (Attachment 5).
- b. The Office of Congressional Affairs will dispatch a letter to the cognizant Congressional Committees informing them that the Commission is considering entering into an amended Agreement with the State.
- c. The Office of Public Affairs will issue a press release.

/RA Samuel J. Collins Acting For/

William D. Travers
Executive Director
for Operations

Attachments:

1. Letter from Governor Leavitt to Chairman Meserve (ML030280380)
2. Acknowledgment Letter from Chairman Meserve to Governor Leavitt (ML030280380)
3. Utah's December 23, 2003 Letter (ML033640565)
4. Draft Federal Register Notice, including the Proposed Amendment to the Agreement (ML)
5. NRC Staff Draft Assessment of the Proposed Utah 11e.(2) Byproduct Materials Program (ML)

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Distribution:

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***See previous concurrence.**

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