

POLICY ISSUE NOTATION VOTE

January 11, 2008

SECY-08-0008

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: SECTION 274b AGREEMENT WITH THE COMMONWEALTH OF
PENNSYLVANIA

PURPOSE:

To request Commission approval of the proposed Agreement with the Commonwealth of Pennsylvania (also referred to as Pennsylvania or the Commonwealth). This paper does not address any new commitments.

SUMMARY:

On November 9, 2006, Governor Edward G. Rendell of Pennsylvania 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 SECY-07-0083, "Proposed Agreement Between the Commonwealth of Pennsylvania and the Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended," dated May 17, 2007, 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 July 18, 2007, and the agency received two comment letters.

Based on the staff's review of the proposed Pennsylvania program and analysis of the comments, the staff recommends that the Commission approve the Agreement (Enclosure 1).

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SECY NOTE: TO BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS AFTER DISPATCH OF LETTERS.

BACKGROUND:

In SECY-07-0083, the staff of the U.S. Nuclear Regulatory Commission (NRC) presented a draft of its assessment of the Pennsylvania Agreement program and discussed the statutory and policy background of the Agreement State program. The Commission approved the staff's recommendation to proceed with processing the application for the Pennsylvania Agreement program in the staff requirements memorandum (SRM) dated June 8, 2007. As required by Section 274e of the Act, the agency published the proposed Agreement in the FR on June 18, 2007 (72 FR 33541), June 25, 2007 (72 FR 34728), July 2, 2007 (72 FR 36069) and July 9, 2007 (72 FR 37268). The NRC made the full text of the staff assessment available through its Agencywide Documents Access and Management System (ADAMS) and Public Electronic Reading Room.

The Agreement will allow Pennsylvania 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 land disposal of all waste for such materials. Pennsylvania is not seeking authority to (1) conduct safety evaluations of sealed sources and devices manufactured in Pennsylvania and distributed in interstate commerce or (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 NRC staff received two comment letters in response to a notice that the Governor of Pennsylvania has proposed to enter into an Agreement with the Commission under Section 274b of the Act. The notice appeared in the FR on June 18, June 25, July 2, and July 9, 2007. The notice contained a copy of the proposed Agreement and a summary of the NRC staff's draft assessment of the proposed Pennsylvania Agreement program.

The FR notice requested comments regarding (1) the proposed Agreement (2) the NRC staff assessment of the Pennsylvania Agreement program (3) the adequacy of the Pennsylvania Agreement program and (4) the adequacy of the Pennsylvania Agreement program staff. The comments received primarily addressed the adequacy of the Pennsylvania Agreement program and the adequacy of the Pennsylvania Agreement program staff.

In summary, the comments did not provide any new information that would change the conclusions in the staff assessment of the Pennsylvania Agreement program, and the staff has not changed the assessment in response to the comments. Enclosure 2 contains the staff analysis of public comments.

(2) SECY-07-0083

In SECY-07-0083, the NRC staff forwarded to the Commission the staff's conclusion that, except as discussed in criterion 20, "Qualifications of Regulatory and Inspection Personnel," of the draft NRC staff assessment of the proposed program, Pennsylvania satisfies the criteria in the Commission's policy statement and, therefore, meets the requirements of Section 274 of the

Act. The proposed Pennsylvania regulatory program, 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. With respect to criterion 20, the NRC staff committed to confirm the assurances provided by Pennsylvania concerning staff training and qualifications before the staff would be able to conclude that criterion 20 is satisfied.

Specifically, the FR notice for the proposed Agreement noted that in the course of the NRC staff's continued interactions with Pennsylvania, the NRC staff planned to verify how Bureau of Radiation Protection (Bureau or BRP) staff fit into the qualification process, which staff members are qualified in certain areas, and the basis for the determinations. The NRC staff conducted an onsite review of Pennsylvania staff training and qualifications between July 30, 2007, and August 2, 2007. The NRC provided the results of the review to the Bureau on August 16, 2007 (ADAMS Accession No. ML072320016).

While onsite, the NRC staff reviewed an updated qualification matrix for Pennsylvania materials inspectors and license reviewers. The matrix identified those materials inspectors and license reviewers who are qualified in certain areas. The NRC staff also examined individual materials inspector and license reviewer qualification journals (which included a review of the bases for qualification determinations) for those staff whom the Bureau currently intends to perform these activities.

The NRC staff identified that the journals were based upon previously approved qualification procedures. However, in several instances, some of the Bureau's procedural requirements necessary to achieve interim qualifications, primarily with respect to the satisfactory completion of formal technical training courses, had not been completed and were not currently scheduled. The NRC staff particularly noted that both inspectors and license reviewers needed additional training in the medical area. Therefore, the NRC staff requested that the Bureau provide a specific plan to implement successfully before signing the Agreement to ensure that the distribution of licensing and inspection staff qualifications is reasonably matched to the anticipated workload under the Agreement. In addition, the NRC staff requested an updated qualification matrix for Pennsylvania materials inspectors and license reviewers, based upon completing the plan.

On November 1, 2007, the NRC staff received the staff training plan and an updated qualification matrix (ADAMS Accession No. ML073120087). The plan now updates that the Commonwealth has provided the missing documentation in its qualification journals identified during the onsite review the week of July 30, 2007. Consequently, the Commonwealth has demonstrated that its staff has equivalent experience to fulfill its qualification requirements in its staffing plan. In addition, in an effort to fill the Bureau's primary gap of a lack of qualified inspectors in the medical area, the Bureau has developed and implemented alternative means to reach its immediate training goals to satisfy criterion 20 before signing the Agreement. For example, the Bureau's regional managers had scheduled training in 2007 with local facilities to enable its inspectors to gain valuable knowledge in the medical area. The Bureau will also continue to send its inspectors to NRC-sponsored training classes as they are scheduled.

The NRC staff concludes that criterion 20 is now satisfied, and as a result, the staff's final assessment (Enclosure 3) of the Pennsylvania program reflects the NRC staff analysis and verification of Pennsylvania staff training and qualifications.

(3) Transfer of Licenses

Currently, the NRC would transfer approximately 690 NRC licenses, either in whole or in part, to Pennsylvania's jurisdiction. The NRC will retain jurisdiction for five licenses issued to Federal agencies, Department of the Army, Defense Logistic Agencies, Health and Human Services, and one Veterans Administration.

The NRC staff is continuing to work closely with the BRP staff to effect a smooth transition. The staff is coordinating with the BRP staff on current or 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 three pending investigations that may result in escalated enforcement actions against NRC licensees located within the Commonwealth. The Office of Enforcement has three other pending enforcement actions against such licensees. Additionally, five allegations are currently open related to NRC licensees within the Commonwealth. 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 Commonwealth or will be transferred to the Commonwealth. The NRC will work closely with the Commonwealth on 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) to 205 licensees in Pennsylvania based on the quantities of material they are authorized to possess. Of those 205 licensees, approximately 63 licensees are implementing the Increased Controls requirements because of the quantities that they possess. As noted in SECY-07-0083, this Order will transfer to the Commonwealth. The NRC staff has approved an order to implement Increased Controls requirements for risk-significant radioactive materials, which the Commonwealth will issue to the same licensees under the proposed Agreement.

As of December 5, 2007, the NRC issued Orders Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Materials (EA-07-305) to those licensees who received the Increased Controls requirements. These orders also will transfer to the Commonwealth.

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

The staff maintains status summaries for all decommissioning sites, including those in Pennsylvania, on NRC's public Web site. The Commission and the public have access to the site summaries through <http://www.nrc.gov/info-finder/decommissioning/complex/>. Under the Agreement, the NRC would transfer a number of complex decommissioning sites to the Commonwealth—Curtis-Wright Cheswick, Molycorp, Safety Light, Superbolt, Westinghouse (Waltz Mill), Quehanna, and Whittaker.

Although Agreement States are not required to notify the NRC when they terminate material licenses, the staff is currently working with the States to gather information on terminated licenses. The staff's annual report titled, "Status of the Decommissioning Program" summarizes information on Agreement State decommissioning sites. In addition, the staff reviews Agreement State decommissioning program activities as part of the Integrated Materials Performance Evaluation Program (IMPEP).

(7) Effective Date of the Agreement

The NRC and BRP staffs have targeted March 31, 2008, as the effective date for the Agreement. The Commonwealth selected this effective date to provide the additional time that the Commonwealth needed to resolve the NRC staff comments on its formal request for an Agreement and the elapsed time the Commonwealth used to complete the steps contained in the milestone schedule provided in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700 "Processing an Agreement." Given the current schedule (Enclosure 4), the March 31, 2008, effective date will provide adequate time for the signing of the Agreement, the orderly transfer of files, and the assumption of authority by Pennsylvania. The Commonwealth has expressed its desire to have the Agreement approved as soon as possible in order to begin hiring and training additional staff. To meet the March 31, 2008, effective date and provide adequate time for the signing of the Agreement, the orderly transfer of the files, and the assumption of authority by the Commonwealth, the staff is requesting the Commission to issue the SRM on this paper before February 1, 2008.

The Commonwealth currently regulates the users of naturally-occurring and accelerator-produced radioactive materials (NARM). The Energy Policy Act of 2005 (EPAAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and 11e.(4) of the Act to include certain NARM. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPAAct requirements. Under the proposed Agreement, the Commonwealth will assume regulatory authority for these radioactive materials. Therefore, the time-limited waiver in the Commonwealth will terminate coincident with the effective date of the Agreement, March 31, 2008, in accordance with the "Plan for the Transition of Regulatory Authority Resulting from the Expanded Definition of Byproduct Material" (72 FR 59157).

IMPLEMENTATION:

Following execution of the Agreement, the staff will continue a program of active interaction with the Commonwealth. The program consists of the exchange of regulatory information, notices of NRC training courses, and periodic onsite reviews of the Commonwealth'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 BRP staff for 9 months after the effective date of the Agreement to discuss the initial program implementation. The first IMPEP review of the Pennsylvania Agreement 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 Pennsylvania.

If approved by the Commission, Pennsylvania will bring the number of Agreement States to 35.

RESOURCES:

Staff estimates approximately 3 full-time equivalents (FTE) are required in Fiscal Year (FY) 2008 to perform materials licensing, inspection, decommissioning, enforcement, allegation casework and transition activities related to Pennsylvania. These resources are included in the FY 2008 budget within the Materials Users subprogram (materials licensing and materials inspection planned activities). FSME anticipates a cost savings due to the transfer of regulatory authority to Pennsylvania, and has incorporated the resource adjustments in the FY 2008 and FY 2009 budgets accordingly.

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 the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA).

CONCLUSION:

The NRC staff concludes that the Commonwealth of Pennsylvania 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 Pennsylvania 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 Pennsylvania program for the regulation of byproduct material, source material, special nuclear material in quantities not sufficient to form a critical mass, and land disposal of all waste for such materials is compatible with the Commission's program for the regulation of like material; and
 - b. That the proposed Pennsylvania program is adequate to protect public health and safety within the Commonwealth with respect to the materials and uses covered by the proposed Agreement.
2. Approve:
 - a. The proposed Agreement between the Commonwealth of Pennsylvania and the NRC pursuant to Section 274 of the Act, as set forth in Enclosure 1.

- b. The proposed Agreement by February 1, 2008, if practicable, to afford adequate time for the signing of the Agreement, the orderly transfer of license files, and the assumption of regulatory authority by the Commonwealth of Pennsylvania on March 31, 2008.

3. Note:

- a. Approval of the proposed Agreement will result in the termination of the Commission-issued waiver (70 FR 51581) on the effective date of the Agreement, March 31, 2008. The Commonwealth of Pennsylvania would then assume regulatory authority over NARM.
- b. The Governor of Pennsylvania desires to sign the Agreement in a formal ceremony. Additional details regarding the formal ceremony will be provided, following approval of the proposed Agreement by the Commission (Enclosure 5).
- c. Pursuant to the Act, SBREFA, and Commission guidance, the staff will inform the Speaker of the House of Representatives, the President of the Senate, the Pennsylvania 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 6).

/RA By Bruce S. Mallett Acting For/

Luis A. Reyes
Executive Director
for Operations

Enclosures:

1. Proposed Agreement between the NRC and the Commonwealth of Pennsylvania
2. Staff Analysis of Public Comments
3. NRC Staff Assessment of the Pennsylvania Program
4. Current Milestone Schedule for Processing the Proposed Agreement
5. Draft Letter from Chairman Dale E. Klein to Governor Edward G. Rendell
6. Draft *Federal Register* Notice of Agreement Signing

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