



POLICY ISSUE

(Notation Vote)

August 27, 2018

SECY-18-0082

FOR: The Commissioners

FROM: Margaret M. Doane
Executive Director for Operations

SUBJECT: SECTION 274b. AGREEMENT WITH THE STATE OF WYOMING

PURPOSE:

To request Commission approval of the proposed Agreement with the State of Wyoming.

SUMMARY:

On November 14, 2017, Governor Matthew Mead of the State of Wyoming requested that the U.S. Nuclear Regulatory Commission (NRC) enter into an Agreement under Section 274b. of the Atomic Energy Act of 1954, as amended (the AEA). The State of Wyoming sought authority to regulate source material involved in the uranium milling process and the disposal of wastes produced from the process. The Commission, through a Staff Requirements Memorandum (SRM) dated June 19, 2018, "SECY-18-0061, Proposed Agreement between the State of Wyoming and the Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended," directed the staff to publish a notice of the proposed Agreement in the *Federal Register (FR)*. The NRC staff published the notice and a summary of the draft staff assessment for public comment. The public comment period ended on July 26, 2018, and the NRC received 11 comment letters on the proposed Agreement. Based on the staff's review of the proposed Wyoming program and analysis of the comments, the staff recommends that the Commission approve the proposed Agreement (Enclosure 1).

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BACKGROUND:

In SECY-18-0061, the NRC staff presented a draft of its assessment and discussed the policy and statutory background of the Wyoming Agreement State program. The Commission approved the staff's recommendation to proceed with processing the application for the Wyoming Agreement State program in an SRM dated June 19, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18170A323).

As required by Section 274e. of the AEA, the NRC staff published the proposed Agreement and a summary of the draft staff assessment for public comment in the *FR* on June 26, 2018 (83 FR 29828), July 3, 2018 (83 FR 31174), July 10, 2018 (83 FR 31981), and July 17, 2018 (83 FR 33257). The comment period ended on July 26, 2018. The NRC made the full text of the draft staff assessment available in ADAMS and the Public Electronic Reading Room.

The proposed Agreement will allow the State of Wyoming to assume regulatory authority for: (1) a subcategory of source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities, and (2) the management and disposal of byproduct material as defined in Section 11e.(2) of the AEA. The State of Wyoming is not seeking authority for byproduct material as defined in Sections 11e.(1), 11e.(3), and 11e.(4) of the AEA; source material not associated with uranium or thorium milling; special nuclear material not sufficient to form a critical mass; regulation of land disposal of byproduct material, source material, or special nuclear material waste received from other persons; or the conduct of safety evaluations of sealed sources and devices manufactured in the State and distributed in interstate commerce.

DISCUSSION:*Public Comments*

The *FR* notice requested comments regarding: (1) the proposed Agreement, especially its effect on public health and safety; (2) the NRC staff's draft assessment of the Wyoming Agreement State program; (3) the adequacy of the Wyoming Agreement State program; and (4) the State of Wyoming radiation program staff.

The NRC received 11 comment letters from 10 commenters: the Nuclear Energy Institute, one uranium mill licensee located in Wyoming, two tribal governments, one environmental organization located in Wyoming, one federal agency, and four anonymous commenters. Two commenters supported the proposed Agreement; three commenters opposed the proposed Agreement; and the remaining commenters did not express a clear view on the proposed Agreement, provided separate questions, provided no comments, or provided comments that were out of scope. The staff analysis of the public comments is set forth in Enclosure 2.

In summary, based on the NRC staff's review and analysis of the public comments, the comments did not provide any new information that would change the proposed Agreement or the staff's conclusions in the draft staff assessment of the State's program.

SECY-18-0061

In SECY-18-0061, the NRC staff concluded that, based on the staff's draft assessment, the State of Wyoming satisfied the Commission's policy statement¹ and therefore met the requirements of Section 274 of the AEA. The staff's final assessment (Enclosure 3) of Wyoming's program reflects the same conclusion. The NRC staff committed in SECY-18-0061 to provide updates to the Commission on the following activities: 1) development of the Memorandum of Understanding (MOU) between the NRC and Wyoming to address the remaining steps in the process to terminate the licenses for the five Uranium Mill Tailings Radiation Control Act (UMTRCA) sites being transferred to the State; 2) additional tribal outreach activities in support of the proposed Agreement; and 3) actions taken with the Strata Ross Programmatic Agreement (PA), Gas Hills PA, and Nichols Ranch Memorandum of Agreement (MOA) to notify Signatories and consulting Tribes of the NRC's discontinuance of regulatory authority should the Agreement go into effect. These updates are included in the discussion below.

Transfer of Licenses

Under the Agreement, the NRC would transfer 14 uranium mill licenses to Wyoming. The NRC staff is working closely with Wyoming's staff to effect a smooth transition of current and pending licensing, inspection, and enforcement activities involving the licenses to be transferred. The NRC staff is working to ensure that a number of major licensing actions are completed before the transfer. In the event a major licensing action is not completed before the transfer, the NRC staff will ensure the transfer to the State of Wyoming will occur in an orderly fashion.

Actions Pending Against Licensees

At the current time, the NRC has a potential enforcement action pending against one licensee whose license is among those to be transferred to Wyoming. If this action is not resolved by the effective date of the Agreement, the enforcement action would be retained by the NRC, and the NRC would coordinate with Wyoming regarding the resolution of this action. Any remaining open inspection 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 Wyoming to ensure the smooth transition of authority over these open actions before the effective date of the Agreement.

Outstanding Orders, Confirmatory Action Letters, and Title 10 of the Code of Federal Regulations (10 CFR) 2.206 Petitions Against Licensees that Will Transfer

There are no outstanding orders, confirmatory action letters, or 10 CFR 2.206 petitions associated with licenses that will be transferred to Wyoming.

Memorandum of Understanding for Decommissioning Sites

There are five licensed sites currently undergoing decommissioning in Wyoming that will be transferred to the State: 1) Anadarko Bear Creek, Powder River Basin; 2) Pathfinder, Lucky Mc,

¹ "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" published January 23, 1981 (46 FR 7540), correction published July 16, 1981 (46 FR 36969), and a revision of criterion 9 published July 21, 1983 (48 FR 33376).

Gas Hills; 3) Umetco Minerals Corporation, Gas Hills; 4) Western Nuclear Inc., Split Rock, Jeffrey City; and 5) Exxon Mobil, Highlands, Converse County. A sixth uranium mill site undergoing decommissioning, American Nuclear Corporation (ANC), will remain under NRC jurisdiction. In SRM-SECY-17-0081 (ADAMS Accession No. ML17277A783), the Commission approved the staff's recommendation for the NRC to retain regulatory authority over the ANC site. Article II.A.14. of the proposed Agreement specifies that the Commission would retain regulatory authority over this site.

While the State's draft application (ADAMS Accession No. ML16300A294) originally requested an Agreement where the NRC would retain regulatory authority for UMTRCA Title II sites undergoing decommissioning, the NRC and Wyoming agreed that the State will assume regulatory authority over the five sites listed above consistent with the approach approved by the Commission in SRM-SECY-16-0084. Under the approach, the NRC and Wyoming will enter into an MOU that will document completed NRC actions related to the decommissioning process for each of the sites and delineate specific actions on a site-by-site basis that the NRC and the State will take to verify completion of the decommissioning and license termination for these sites. The MOU stipulates that any review or decision made by the NRC for the five uranium mill tailings sites prior to the discontinuation of NRC's regulatory authority in Wyoming will be recognized by the NRC as meeting all applicable standards and requirements when reviewing the Completion Review Report, which is required to be submitted to the NRC for review and approval to adequately ensure public health and safety. Upon termination of each license, the site will be transferred to the U.S. Department of Energy for long-term care and surveillance. The NRC staff and Wyoming have agreed to the terms of the MOU and the specific actions that will be undertaken for each of the five sites. The MOU will be signed by the Director of the Office of Nuclear Material Safety and Safeguards and the Director of the Wyoming Department of Environmental Quality in September 2018 and published in the *FR*. The NRC will provide an updated and final list of completed and remaining activities for each site to the State of Wyoming no later than 30 days after the effective date of the Agreement.

Tribal Outreach Activities

As noted in SECY-18-0061, the NRC staff has conducted a number of outreach activities with two Tribes in Wyoming (the Arapaho and Eastern Shoshone Tribes of the Wind River Reservation) and with approximately 30 other Tribes that have expressed interest to the NRC regarding the licensing of uranium mills in Wyoming. The NRC held a webinar on April 26, 2018, to discuss the status of the Wyoming Agreement, the public comment process for the proposed Agreement, and the NRC's actions with regard to the two PAs and MOA. Fifteen individuals participated in the webinar; and none of the participants identified themselves as tribal representatives. In the weeks leading up to this webinar, the NRC staff contacted the two Wyoming Tribes and the 30 other interested Tribes by telephone and e-mail to inform them of the meeting (ADAMS Accession No. ML18215A248). The NRC staff also worked with the Wyoming Governor's Tribal Liaison to solicit interest in the webinar. A video of the webinar is available on the Wyoming Agreement website;² the NRC also provided copies of the video to the two Tribes in Wyoming (Arapaho and Eastern Shoshone Tribes of the Wind River Reservation).

In late June 2018, the NRC staff e-mailed, telephoned, and sent letters to the interested Tribes to inform them of the publication of the proposed Agreement and the draft staff assessment (ADAMS Accession No. ML18215A251).

² <https://www.nrc.gov/about-nrc/state-tribal/agreement-states/wyoming.html>

Programmatic Agreements and Memorandum of Agreement for Historical and Cultural Resources

In SECY-18-0061, the NRC staff informed the Commission that currently three uranium mill licenses in Wyoming have an active PA or MOA to address historic and cultural resources under Section 106 of the National Historic Preservation Act. The three licenses are Strata Ross, Energy Fuels Nichols Ranch, and Cameco Smith Ranch (Gas Hills site). Upon the effective date of the Wyoming Agreement, the NRC would no longer have regulatory authority over these facilities and the NRC's participation in these PAs and MOA will cease. To provide transparency in the transfer of regulatory responsibility from the NRC to Wyoming, the NRC staff notified the signatories and consulting Tribes of the proposed Agreement and NRC's plans to end its involvement in the PAs and MOA.

The Strata Ross PA was amended effective July 18, 2018. The amended PA included language acknowledging that upon either the effective date of the Wyoming Agreement or the date that the NRC determined that the licensee completed all activities required by the PA, the PA would expire. The licensee has completed all the activities required by the PA, and the PA expired effective August 1, 2018 (ADAMS Accession No. ML18201A408).

After consulting with the Advisory Council on Historic Preservation (ACHP), the NRC staff concluded that the appropriate regulatory approach for the Nichols Ranch MOA would be for the NRC to terminate its involvement in the MOA because the NRC would no longer be able to participate in the MOA upon the effective date of the Agreement.³ In accordance with the terms of the MOA, the NRC staff notified the signatories on June 28, 2018 (ADAMS Accession No. ML18143B398) and the participating Tribes (ADAMS Accession No. ML18143B201) of the NRC's intent to terminate its involvement in the MOA on September 30, 2018, should the Agreement go into effect.

In 2012, the Gas Hill PA was amended to have the Bureau of Land Management (BLM) serve as the lead federal agency responsible for Section 106 activities. By letter dated August 2, 2018, the NRC notified BLM, ACHP, and the signatories to the PA that the NRC would no longer participate in the PA upon the effective date of the Wyoming Agreement and requested that BLM amend the PA to remove the NRC as a participant (ADAMS Accession No. ML18205A251). The consulting Tribes to the Gas Hills PA were also notified of the NRC's anticipated change in status (ADAMS Accession No. ML18205A340).

Effective Date of the Agreement

The Governor of Wyoming requested that the Agreement go into effect by September 30, 2018 (ADAMS Accession No ML18170A323). To accommodate this request, the staff requests that the Commission reach a decision on the staff's recommendations in this paper by September 14, 2018, to allow adequate time for preparation of the Agreement for signature, the orderly transfer of files, and the assumption of authority by the State. An effective date of September 30, 2018, will also avoid the assessment of fiscal year (FY) 2019 NRC fees for the licenses transferring to Wyoming. See Enclosure 4 for a schedule of the remaining steps for processing the proposed Agreement.

³ The BLM has a separate MOA associated with the Energy Fuels Nichols Ranch license that will remain active after the Wyoming Agreement goes into effect.

IMPLEMENTATION:

Following the effective date of the Agreement, the staff will continue to interact with Wyoming. This interaction will include the exchange of regulatory information, notices of NRC training courses, and periodic onsite reviews of the State'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 plans to hold an orientation meeting with the Wyoming Department of Environmental Quality about 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 Wyoming Agreement State program will be about 18 months after the effective date of the Agreement. Subsequent routine IMPEP reviews will occur in accordance with the guidance in Management Directive 5.6, Integrated Materials Performance Evaluation Program (IMPEP).

If approved by the Commission, the State of Wyoming will be the 38th Agreement State.

RESOURCES:

In Enclosure 5 to SECY-18-0061, the NRC staff provided resources included in the FY 2018 enacted budget and the FY 2019 Congressional Budget Justification. Those resource estimates have not changed and continue to sufficiently address activities discussed in this SECY paper.

CONCLUSION:

The NRC staff concludes that the State of Wyoming 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," which demonstrates that the proposed Agreement meets the requirements of Section 274 of the AEA.

The proposed Wyoming program to regulate materials under the Agreement comprised of statutes, regulations, and procedures is: 1) compatible with the Commission's program, and 2) 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 Wyoming program to assume regulatory authority for (1) a subcategory of source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities and (2) the management and disposal of byproduct material as defined in 11e.(2) of the AEA is compatible with the Commission's program for the regulation of like materials; and

(b) That the proposed Wyoming 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 Wyoming and the NRC pursuant to Section 274 of the AEA, as set forth in Enclosure 1, by September 14, 2018, to provide adequate time for the signing of the Agreement, the orderly transfer of license files, and the assumption of regulatory authority by the State of Wyoming on September 30, 2018.

3. Note:

(a) The Governor of Wyoming has requested a formal signing ceremony, which has been tentatively scheduled to take place on September 25, 2018, in Cheyenne, Wyoming. Upon approval of the Agreement by the Commission, the NRC staff will prepare the formal documents for the Governor's and Chairman's signatures.

(b) Pursuant to the AEA, the Small Business Regulatory Enforcement and Fairness Act of 1996, and Commission guidance, the staff will inform the Speaker of the House of Representatives, the President of the Senate, the Wyoming Congressional delegation, and the Director of the Government Accountability Office of the Commission's decision.

(c) The NRC Office of Public Affairs will issue a press release.

(d) The agency will publish the text of the Agreement in the *FR*, as required by Section 274e. of the AEA, within 30 days after the Agreement is signed (Enclosure 5).

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 Congressional Review Act.

Handwritten signature of Margaret M. Doane in cursive, with the initials "FOR" written below the signature line.

Margaret M. Doane
Executive Director
for Operations

Enclosures:

1. Proposed Agreement
2. Staff Analysis of Public Comments
3. NRC Staff Assessment
4. Current Milestone Schedule
5. Draft *Federal Register* notice

SUBJECT: SECY-18-XXX - SECTION 274b. AGREEMENT WITH THE STATE OF WYOMING.
 DATED: August 27, 2018

ADAMS Accession Nos.: ML18192B111 (P); ML18190A310 (Paper) *concurrence via e-mail

OFC	NMSS/MSST	NMSS/MSST	OGC	NMSS/MSST	NMSS/DUWP*	OCFO*
NAME	DWhite	PMichalak	TCampbell	DCollins	JTappert (AKock for)	MLee
DATE	8/3/18	8/6/18	NLO 8/6/18	8/9/18	8/10/18	8/6/18
OFC	RIV*	NMSS	EDO			
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