



UNITED STATESnm
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 26, 2016

Ms. Eva La
Assistant Attorney General
Wyoming Office of the Attorney General
Division of Water and Natural Resources
123 State Capitol
Cheyenne, WY 82002

Dear Ms. La:

We have reviewed Wyoming's response to our letter dated September 28, 2015, regarding the revised enabling legislation contained in Wyoming 16LSO-0080, Working Draft 0.8 for Wyoming House Bill HB0027, received by our office on November 19, 2015. The legislation was reviewed by comparison to the criteria in Section 4.1.1 of the Office of Nuclear Material Safety and Safeguards procedure SA-700 and Handbook, "*Processing an Agreement*" (<https://scp.nrc.gov/procedures/sa700.pdf>). We discussed our review of the legislation with Ryan Schierman on September 2, 2016. The results of our review of the Wyoming trespass law, Wyoming Enrolled Act No. 61, will be transmitted under separate cover.

We appreciate the opportunity to respond to your comments. As a result of our review, we have 12 comments that have been identified in the enclosure.

We recommend that you address these comments. Some of our comments regarding the interpretation of the legislation should be addressed by the Wyoming Attorney General's office. If the comments can be addressed through other statutes, please provide this information in your draft request for an Agreement. If you would like us to review this information prior to the submittal of your draft request, please let us know. In addition, to assist the State in responding to these comments, you may refer to the 1983 Council of State Governments generic model of a Radiation Control Act in Suggested State Legislation, Volume 42, can be found at <http://www.crcpd.org/PDF/RadControl.PDF>.

E. La

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If you have any questions regarding the comments, please contact Michelle Beardsley at (610) 337-6942 ((Michelle.Beardsley@nrc.gov), or Stephen Poy at (301) 415-7135 (Stephen.Poy@nrc.gov).

Sincerely,

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PHenderson for DCollins*

Daniel S. Collins, Director
Division of Material Safety, State, Tribal
and Rulemaking Programs
Office of Nuclear Material Safety
and Safeguards

Enclosure:
Comment table

**COMMENTS ON WYOMING REVISED ENABLING LEGISLATION
SENT IN RESPONSE TO NRC LETTER
DATED SEPTEMBER 28, 2015/ ML15266A385**

WYOMING SECTION		NRC SECTION (SA-700)	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	N/A	4.1.1.1 ¶ (a)	N/A	N/A	<p>The Wyoming legislation does not directly establish a radioactive materials program or define its structure. Please see SA-700 Handbook, Section 4.1.1.1, Information Needed paragraph (a).</p> <p>COMMENT MODIFIED:</p> <p>Wyoming DEQ indicates that they are developing rules and regulations that will be included in the draft application.</p> <p>Further legislative changes should also address this comment. In particular, the legislation needs to be amended to articulate the scope of the agreement “to assume authority over uranium and thorium milling activities, and the possession and use of source material involved in the extraction and concentration of uranium and thorium in source material and ores, and the management and disposal of the resulting byproduct material as defined in Section 11e. (2) of the Atomic Energy Act, as amended”</p>
2	Wyoming Statute: §§ 35-11-2003(a)	4.1.1.1 ¶ (b)(2), (3), (4) and (5)	N/A	N/A	<p>Although the Wyoming legislation does authorize the program to issue licenses, the Wyoming legislation does not clearly authorize the program to:</p> <ul style="list-style-type: none"> - recognize the licenses of other jurisdictions; or - make it unlawful to acquire, possess, store, use, transfer, or dispose of materials without a valid license, or to violate the conditions of a license; or - authorizes the program to recognize licenses transferred from the NRC under the Agreement as State

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					<p>licenses.</p> <p>Please see SA-700 Handbook, Section 4.1.1.1, Information Needed, paragraph (b)(2), (3), (4), and (5).</p> <p>COMMENT MODIFIED:</p> <p>Wyoming will need to have regulations and requirements that allow for the State to recognize Agreement State licenses that transfer to Wyoming. This will include licenses for byproduct and source material transferred to Wyoming jurisdiction for disposal or processing.</p>
3	Wyoming Statute: §§ 35-11-2003(a)	4.1.1.2 ¶ (c)	N/A	N/A	<p>The Wyoming legislation does not provide for recognition of licenses transferred from NRC to the State under the Agreement, and the Wyoming legislation does not authorize the reciprocal recognition of specific licenses issued by NRC or other Agreement States.</p> <p>Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (c) for information regarding this matter.</p> <p>COMMENT MODIFIED:</p> <p>Because of the scope of their limited Agreement, the State of Wyoming will need to provide explicit language that indicates that Wyoming has reciprocal recognition of NRC and Agreement State licenses.</p>

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4	Wyoming Statute: §§ 35-11-2003	4.1.1.2 ¶ (h)	N/A	N/A	<p>The Wyoming legislation does not provide for imposition of civil penalties, does not provide general authority to take prompt enforcement action, and does not authorize a variety of legal sanctions, including suspension of licenses and impoundment of materials. In cases of imminent threat to public health and safety, the law should authorize immediate suspension without prior hearing.</p> <p>COMMENT MODIFIED:</p> <p>Wyoming’s legislation does not explicitly identify impoundment of materials in its legislation. Wyoming needs to indicate in its legislation that it can take prompt enforcement action demonstrating that it can execute the impoundment of materials.</p> <p>Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (h) for information regarding this matter.</p>

WYOMING SECTION		NRC SECTION (SA-700)	RATS ID	CATEGORY	SUBJECT and COMMENTS
5	N/A	4.1.1.4 ¶ (c)	N/A	N/A	<p>The Wyoming legislation does not require the program, before issuing an 11e.(2) byproduct material license, to do the following:</p> <ul style="list-style-type: none"> - give notice of the proposed licensing action and accept written comments during a public comment period; - prepare a written analysis of the impact on the environment of the licensed activity; - hold a public hearing with a transcript and cross examination; - prepare a written decision based on evidence presented during the public comment period. The decision must be subject to judicial review; and - ban major construction before the completion of the written environmental analysis. <p>Please see SA-700 Handbook, Section 4.1.1.4, Additional Evaluation Criteria for 11e.(2) Byproduct Material Agreements, paragraph (c) for information regarding this matter.</p> <p>Wyoming DEQ indicates that they are developing rules and regulations that will be included in the draft application.</p> <p>Comment Stands.</p>

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6	N/A	4.1.1.4	N/A	N/A	<p>The Wyoming legislation does not require the Agreement materials program to provide an opportunity for public participation through written comments or public hearings during rulemaking. The legislation must also make rules subject to judicial review.</p> <p>Please see SA-700 Handbook, Section 4.1.1.4, Additional Evaluation Criteria for 11e.(2) Byproduct Material Agreements, paragraph (d) for information regarding this matter.</p> <p>Wyoming DEQ indicates that they are developing rules and regulations that will be included in the draft application.</p> <p>Comment Stands.</p>
7	Wyoming Statute: §§ 35-11-2004	4.1.1.4	N/A	N/A	<p>The Wyoming legislation must consider the authorities reserved to the NRC under Uranium Mill Tailing Radiation Control Act (UMTRCA) (see 10 CFR 150.15(a)), including the authority to:</p> <ul style="list-style-type: none"> - establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of the 11e.(2) byproduct material; - determine, before the termination of a license, that the licensee has complied with decontamination, decommissioning and reclamation standards, and ownership requirements for sites at which 11e.(2) byproduct material is present; - require, before termination of a license for 11e.(2) byproduct material or for any activity that results in the production of such material, that the title to the 11e.(2) byproduct material and the disposal site are transferred to the Federal Government (or the

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				<p>State at the option of the State, provided the State exercises the option before termination of the license);</p> <ul style="list-style-type: none"> - require monitoring, maintenance, and emergency measures after the license is terminated as may be necessary to protect the public health and safety for those materials and property for which the State has assumed custody; - permit use of the surface or subsurface estate, or both, of the disposal site land transferred to the United States or the State; and - exempt land ownership transfer requirements of Section 83(b)(1)(A) of the AEA. <p>Please see SA-700 Handbook, Section 4.1.1.4, Additional Evaluation Criteria for 11e.(2) Byproduct Material Agreements for information regarding this matter.</p> <p>Comment Modified:.</p> <p>Wyoming needs to have requirements in either statute or regulations equivalent to AEA Section 274o. that allows the State to have regulatory requirements equivalent to the extent practicable, or more stringent than, standards adopted and enforced by the Commission. The last sentence in 35-11-2003(e) should be deleted because it does not specifically mention requiring financial assurance for decontamination or reclamation costs as required under 10 CFR Part 40 Appendix A.</p>

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8	Wyoming Statute: §§ 35-11-2002(b)	N/A	N/A	<p>On page 4 line 68, the first paragraph contains the phrase, “consistent with the Wyoming Administrative Procedure Act.” The state will need to ensure that the WY Administrative Procedures Act is consistent with AEA 274o. procedures. If it is not consistent, then this legislation will need to authorize the Department to create rules consistent with 274o.</p> <p>Comment Modified:</p> <p>In Wyoming Statute § 35-11-2002(b), it states, “The council, upon recommendation from the director, is authorized to promulgate reasonable rules.” This needs to be replaced by the phrase, “The council, upon recommendation from the director, is authorized to promulgate rules.”</p>
9	Wyoming Statute: §§ 35-11-2001	N/A	N/A	<p>On page 2 line 13, the phrase, “source material from recovery or milling,” is used. This phrase can be interpreted to mean that Wyoming will be looking to assume authority over all source material. If that is the intent, it should say, “source material as defined in AEA section 11z.”</p> <p>If the intent is to assume authority over the milling and recovery operations that handle source material, then the wording needs to be revised to articulate the scope of the agreement as “to assume authority over uranium and thorium milling activities, and the possession and use of source material involved in the extraction and concentration of uranium and thorium in source material and ores, and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act.”</p> <p>Comment Stands.</p>

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10	Wyoming Statute: §§ 35-11-2001	N/A	N/A	N/A	<p>On page 2 line 13, the phrase, “byproduct material generated under section 274,” is used. Byproduct material is not “generated” under section 274. This phrasing is confusing.</p> <p>Comment Modified:</p> <p>Wyoming’s definition of “byproduct material” needs to match the Commission approved language in SECY 16-0084.</p>
11	Wyoming Statute: §§ 35-11-2001	N/A	N/A	N/A	<p>On page 3 line 9, the phrase, “source material from recovery or milling and the byproduct material generated,” is used.</p> <p>COMMENT MODIFIED:</p> <p>The phrase, “source material from recovery or milling and the byproduct material generated under section 274,” needs to match the Commission approved language in SECY 16-0084.</p>

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12	Wyoming Statute: §§ 35-11-2003(d)	N/A	N/A	<p data-bbox="982 323 1528 793">On page 5 line 5, it states, "Licensees, permittees, and applicants for a license or permit shall obtain and grant the department access to inspect their mining operations, source material recovery or milling operations and the byproduct material generated at such times and frequencies as determined necessary by the department to protect public health and safety." This language implies that a positive determination is necessary from the department. It could be interpreted to limit the department's ability to conduct routine or unannounced inspections.</p> <p data-bbox="982 827 1300 856">COMMENT MODIFIED:</p> <p data-bbox="982 892 1528 1260">Wyoming needs to provide a response from WYDEQ and the Wyoming Attorney General's Office explaining that the department has authority to inspect for compliance with all statutory, regulatory, license conditions, and order requirements regarding the regulation of milling activities and management and disposal of 11e.(2) material in the State.</p>