



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

May 22, 2019

Mr. Terry L. O'Clair, Director
North Dakota Department of Health
Division of Air Quality, 2nd Floor
918 East Divide Ave.
Bismark, ND 58501-1947

Dear Mr. O'Clair:

We have reviewed your letter transmitting the proposed North Dakota legislation in Senate Bill No. 2037, received by our office on February 19, 2019. We note that the Senate Bill includes language relating to the disposal and storage of high-level radioactive waste.

The Nuclear Regulatory Commission (NRC) regulates the civilian use of radioactive materials to provide reasonable assurance of adequate protection of the public health and safety and to promote the common defense and security and to protect the environment. Section 274 of the Atomic Energy Act of 1954, as amended (AEA), allows the NRC to discontinue, and a state to assume through a Section 274 Agreement and a compatible regulatory program, certain regulatory authorities over materials enumerated in Section 274c. of the AEA. These materials are byproduct material, source material, and special nuclear materials in quantities not sufficient to form a critical mass.¹ In September 1969, North Dakota entered into a Section 274 Agreement where the NRC discontinued, and North Dakota assumed, regulatory authority over byproduct material, source material, and special nuclear materials in quantities not sufficient to form a critical mass.² However, Section 274 Agreements, generally, and North Dakota's Section 274 Agreement, specifically, does not discontinue NRC's regulatory authority regarding high-level radioactive waste. Therefore, regulating the disposal or storage of high-level radioactive waste by North Dakota is not within the scope of its Section 274 Agreement.

¹ The AEA can be found in [NUREG-0980, Vol. 1, "Nuclear Regulatory Legislation: 113th Congress."](#)

² The Section 274 Agreement between the Atomic Energy Commission, the NRC's predecessor agency, and North Dakota can be found at <https://scp.nrc.gov/special/regs/ndagreements.pdf>.

If you have any questions regarding the review, please contact Michelle Beardsley, State Regulation Review Coordinator (Michelle.Beardsley@nrc.gov) at (267) 884-2305 or Stephen Poy at (301) 415-7135 (Stephen.Poy@nrc.gov).

Sincerely,

/RA Paul Michalak for/

Andrea L. Kock, Director
Division of Material Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards