



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

September 28, 2015

Mr. Ryan Schierman  
Program Manager of Natural Resources  
Wyoming Department of Environmental Quality  
Land Quality Division  
122 W. 25<sup>th</sup> Street  
Herschler 4W  
Cheyenne, WY 82002

Dear Mr. Schierman:

We have reviewed Wyoming's enabling legislation contained in Wyoming House Bill HB0027, received by our office on August 14, 2015. The legislation was reviewed by comparison to the criteria in Section 4.1.1 of the Office of Nuclear Material Safety and Safeguards (NMSS) procedure SA-700 and Handbook, "*Processing an Agreement*" (<https://scp.nrc.gov/procedures/sa700.pdf>). We discussed our review of the legislation with you on September 24, 2015.

We appreciate the opportunity to perform an early review of your legislation and offer the following 27 comments:

1. The Wyoming legislation does not directly establish a radioactive materials program or define its structure. Please see SA-700, Section 4.1.1.1, "Information Needed," paragraph (a).
2. Although the Wyoming legislation does authorize the program to issue licenses, the Wyoming legislation does not clearly authorize the program to:
  - 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
  - recognize licenses transferred from the U.S. Nuclear Regulatory Commission (NRC) under the Agreement as State licenses.

Please see SA-700 Handbook, Section 4.1.1.1, "Information Needed," paragraph (b)(2), (3), (4), and (5).

3. Although the Wyoming legislation does authorize the program to adopt regulations, the Wyoming legislation does not specify the procedures and requirements for adoption of regulations, including public participation. Please see SA-700 Handbook, Section 4.1.1.1, "Information Needed," paragraph (c)(1).
4. The Wyoming legislation does not expressly authorize the program to require compliance with regulatory requirements by both licensees and unlicensed individuals.

Please see SA-700 Handbook, Section 4.1.1.1, "Information needed," paragraph (e) for information regarding this matter.

5. The Wyoming legislation does not expressly authorize the program to impose sanctions for violations of the regulations, orders, or license conditions. Please see SA-700 Handbook, Section 4.1.1.1, "Information needed," paragraph (f) for information regarding this matter.
6. The Wyoming legislation does not establish conflict of interest and ethics regulations or procedures applicable to those portions of the State radiation control program covered by the Agreement. Please see SA-700 Handbook, Section 4.1.1.1, "Information needed," paragraph (g) for information regarding this matter.
7. Although the Wyoming legislation does not apply to nuclear reactors, the Wyoming legislation does not explicitly exclude other materials or activities reserved to the NRC under Section 274c of the Atomic Energy Act of 1954, as amended, and Title 10 of the Code of Federal Regulations Part 150. Please see SA-700 Handbook, Section 4.1.1.2, "Evaluation Criteria," paragraph (b) for information regarding this matter.
8. The Wyoming legislation does not provide for recognition of licenses transferred from the NRC to the State under the Agreement, and the Wyoming legislation does not authorize the reciprocal recognition of specific licenses issued by the NRC or other Agreement States. Please see SA-700 Handbook, Section 4.1.1.2, "Evaluation Criteria," paragraph (c) for information regarding this matter.
9. The Wyoming legislation does not contain a general authorization to conduct inspections of licensee operations to ensure compliance with regulatory requirements. The Wyoming legislation also does not authorize inspections of unlicensed facilities to assess the risk resulting from accidents or environmental releases of materials. Please see SA-700 Handbook, Section 4.1.1.2, "Evaluation Criteria," paragraph (g) for information regarding this matter.
10. The Wyoming legislation does not provide for imposition of civil penalties, and the Wyoming legislation 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. Please see SA-700 Handbook, Section 4.1.1.2, "Evaluation Criteria," paragraph (h) for information regarding this matter.
11. The Wyoming legislation does not provide for the imposition of civil penalties, and the Wyoming legislation does not:
  - authorize suspension or revocation of a license for repeated or continued noncompliance;
  - authorize the program to seek injunctive relief; or
  - authorize the program to refer licensees for criminal prosecution.

Please see SA-700 Handbook, Section 4.1.1.2, "Evaluation Criteria," paragraph (i) for information regarding this matter.

12. The Wyoming legislation does not require the program, before issuing an 11e.(2) byproduct material license, to do the following:
  - 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.

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.

13. 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; 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.
14. The Wyoming legislation does not require the Agreement materials program, before terminating an 11e.(2) byproduct material license, to do the following:
  - transfer funds collected for decommissioning and long-term surveillance and maintenance to the United States. The legislation must require this transfer when custody of the disposal site transfers to the United States. Funds transferred must include all funds collected from a licensee or its surety. The only exceptions are funds collected for decommissioning if it is completed;
  - choose whether or not to take title to the disposal site and byproduct material; and
  - obtain a determination from the Commission that all applicable standards are satisfied.

Please see SA-700 Handbook, Section 4.1.1.4, "Additional Evaluation Criteria for 11e.(2) Byproduct Material Agreements," paragraph (e) for information regarding this matter.

15. The Wyoming legislation must consider the authorities reserved to the NRC under the Uranium Mill Tailings Radiation Control Act (UMTRCA) (see 10 CFR 150.15(a)), including the authority to:
  - 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 State at the option of the State, provided the State exercises the option before termination of the license);
- 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 Atomic Energy Act of 1954, as amended (AEA).

Please see SA-700 Handbook, Section 4.1.1.4, "Additional Evaluation Criteria for 11e.(2) Byproduct Material Agreements" for information regarding this matter.

16. On page 1 line 17, it states, "authorizing the Department to implement and administer the program." The Enrolled Act No. 61 in Wyoming that restricts inspection activities creates an incompatible obstacle to assuming regulatory responsibility over the NRC responsibility for source and byproduct material. See,

ENROLLED ACT NO. 61, SENATE  
SIXTY-THIRD LEGISLATURE OF THE STATE OF WYOMING  
2015 GENERAL SESSION

Trespassing to unlawfully collect resource data and unlawful collection of resource data.

17. On page 2 line 40, it states, "Authorization to negotiate transfer of certain nuclear regulatory functions to the state." "Assumption" of certain nuclear regulatory functions "by" the State is more accurate phrasing.
18. On page 3 line 51, it states, "The Department is authorized to issue licenses as the means of authorizing licensees to possess and use source material from milling and byproduct materials." Possession and use must be clarified and defined. The State of Wyoming cannot authorize a utilization facility under its Agreement State program.
19. 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 Wyoming Administrative Procedures Act is consistent with AEA 274o procedures. If it is not consistent, then this legislation will need to authorize the Wyoming Department of Environmental Quality (the Department) to create rules consistent with 274o.
20. On page 4 line 80, it states "if the exemption(s) provide adequate protection of public health and safety." Wyoming needs to include the phrase, "and are compatible with NRC regulations."

21. On page 4 line 86, it states “To facilitate inspections, licensees and proposed licensees shall obtain and grant access to the Department at all reasonable times.” There should be an explicit (rather than implied) repeal of the sampling trespass law.
22. On page 5 line 107, it states “The Department is authorized to implement through rulemaking and licensing the enforcement of the requirements of the AEA (42 U.S.C. § 2011 et seq. (2015)) under the agreement reached between the State and NRC for the AEA materials and activities described in W.S. 35-11-2001(a).” This could be stated clearer by including the phrase, “that are assumed by agreement under Section 274 of the AEA,” after the initial reference to the AEA in the sentence above.
23. 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.” If the intent is to assume authority over the milling and recovery operations that handle source material, then the wording needs to be revised. (e.g. The extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, and the possession and transfer of such source material in the recovery or milling process.)
24. On page 2 line 13, the phrase, “byproduct material generated under section 274,” is used. Byproduct material is not “generated” under section 274. Please revise to state that “byproduct material included under section 274.”
25. On page 3 line 9, the phrases, “source material from recovery or milling”, and “byproduct material generated,” are used. See comments 23 and 24.
26. On page 4 line 17, it states, “The director shall grant an exemption from a license requirement, including an exemption from the requirement to obtain a license, if the exemption provides adequate protection of public health and safety.” This language is too broad and could lead to incompatible exemptions. The exemption authority should be no broader than the NRC exemption criteria – particularly for exemptions that are non-discretionary.
27. 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. This phrase needs to be rephrased to state, “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 conducted by the Department to protect public health and safety.”

R. Schierman

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We recommend that you address the 27 comments above. 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, 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>.

The State of Wyoming may also resolve these comments through interpretation of State law. The NRC will accept interpretations provided by the State Attorney General, or other attorneys designated as a legal advisor to the radioactive materials program.

If you have any questions regarding the comments, please contact Michelle Beardsley at 610-337-6942 ([michelle.beardsley@nrc.gov](mailto:michelle.beardsley@nrc.gov)), or Stephen Poy at 301-415-7135 ([stephen.poy@nrc.gov](mailto:stephen.poy@nrc.gov)).

Sincerely,

***/RA Pamela Henderson for/***

Josephine M. Piccone, Director  
Division of Material Safety, State, Tribal  
and Rulemaking Programs  
Office of Nuclear Material Safety  
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Sincerely,

*/RA Pamela Henderson for/*

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