

November 30, 2007

The Honorable Thomas R. Carper
Chairman, Subcommittee on Clean Air
and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am writing to inform you that significant progress has been made with respect to the implementation of Section 651(e) of the Energy Policy Act of 2005 (EPAct). On October 1, 2007, the NRC issued its final regulations that establish a regulatory framework for certain accelerator-produced radioactive material and certain discrete sources of radium and naturally occurring radioactive materials. As you are aware, these radioactive materials now fall under the definition of byproduct material in Sections 11e.(3) and (4) of the Atomic Energy Act of 1954, as amended (AEA).

Also, as authorized by Section 651(e) of the EPAct, the NRC issued a waiver on August 31, 2005, to allow persons engaged in activities involving the newly defined byproduct materials to continue with their operations in a safe manner and allow continued State regulatory programs. The NRC is in the process of terminating the waiver in phases, beginning today and ending on August 7, 2009.

The NRC has published a Plan for the Transition of Regulatory Authority Resulting from the Expanded Definition of Byproduct Material (transition plan) in the *Federal Register* on October 19, 2007. The transition plan was required by the EPAct and outlines an orderly transition of regulatory authority with respect to the newly defined byproduct materials. The NRC has begun the transition of regulatory authority for these materials in accordance with this plan.

As provided by Section 274b. of the AEA, the NRC, under an Agreement with a State, relinquishes its authority over certain nuclear materials and a State assumes its authority under compatible State statutes and regulations. These States are referred to as "Agreement States." The NRC received certifications from the Governors of all 34 Agreement States and determined that these States have a program to license byproduct material, as defined in Sections 11e.(3) and (4) of the AEA, that is adequate to protect the public health and safety. Effective today, the waivers for all 34 Agreement States were terminated:

Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington, and Wisconsin.

In accordance with Section 651(e)(4)(C)(iii) of the EPAct and the provisions of the transition plan, the Agreements entered into between the NRC and each of these States under Section 274b. of the AEA, are now considered to also include the byproduct materials in Sections 11e.(3) and (4). Thus, for these States, the transition of regulatory authority is complete.

Also, during this initial phase, the NRC terminated the waiver for all Federal Government agencies, Federally Recognized Indian Tribes, Delaware, District of Columbia, Puerto Rico, the U.S. Virgin Islands, Indiana, Wyoming, and Montana. The transition of regulatory authority and waiver termination for the remaining non-Agreement States and U.S. Territories will occur in phases over the next 22 months.

The NRC is working closely with affected States and individuals to ensure a smooth transition of regulatory authority and will continue to keep you informed of its progress in the implementation of these new requirements.

Sincerely,

/RA/

Dale E. Klein

cc: Senator George V. Voinovich

LETTER TO NRC OVERSIGHT COMMITTEES

Identical letter sent to:

The Honorable Thomas R. Carper
Chairman, Subcommittee on Clean Air
and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator George V. Voinovich

The Honorable Rick Boucher
Chairman, Subcommittee on Energy
and Air Quality
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative J. Dennis Hastert

The Honorable Peter J. Visclosky
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515
cc: Representative David L. Hobson

The Honorable Byron Dorgan
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510
cc: Senator Pete V. Domenici

The Honorable Joseph I. Lieberman
Chairman, Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510
cc: Senator Susan Collins

The Honorable Henry Waxman
Chairman, Committee on Oversight
and Government Reform
United States House of Representatives
Washington, D.C. 20515
cc: Representative Tom Davis

The Honorable Jeff Bingaman
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510
cc: Senator Pete V. Domenici

The Honorable Barbara Boxer
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator James M. Inhofe

The Honorable John D. Dingell
Chairman, Committee on Energy
and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative Joe Barton

**Copies of the letter will be provided electronically by OCA to the U.S. Senators
for the following States:**

Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Iowa, Illinois, Kansas,
Kentucky, Louisiana, Massachusetts, Maine, Maryland, Minnesota, Mississippi, Nebraska,
Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio,
Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington, and
Wisconsin.