

APPENDIX B TO ATTACHMENT 4

OVERVIEW OF THE MINNESOTA RADIATION CONTROL PROGRAM IN SUPPORT OF TEAM LEADER'S APPROACH

The Section 274 legislation was called the Federal-State Amendment, and its purpose was to resolve the present Minnesota compatibility (preemption) concerns. The legislation was designed to promote an orderly regulatory pattern between the Federal and State governments with respect to the regulation of byproduct, source, and special nuclear materials, while avoiding dual regulation. During the hearings on the 1959 legislation, Minnesota regulation in areas reserved to the Commission was discussed, as an issue to be addressed and resolved by the passage of Section 274.

In the past, Minnesota's actions, statutes, and regulations have not been in concert with the Act, the NRC's regulatory program, and the 33 other Agreement State Programs. These historical aspects of Minnesota's regulation of areas reserved to the Commission are discussed below.

The Minnesota June 1996, "Staff Report to the Minnesota Environmental Quality Board (MEQB) on the Siting of a Dry Cask Storage Facility in Goodhue County," (Minnesota Staff Report), documents the State's action in areas reserved to the Commission:

<http://www.me3.org/issues/nuclear/eqbnukes1.html>

<http://www.me3.org/issues/nuclear/eqbnukes2.html>

<http://www.me3.org/issues/nuclear/eqbnukes3.html>

1. Minnesota Challenges NRC Authority to Regulate Reactors: Landmark Case of *Northern States Power Company v. Minnesota* D. Minn.1970), aff'd 447 F. 2d (8th Cir. 1971)

In the landmark case of *Northern States Power Company v. State of Minnesota*, Court of Appeals for the Eighth Circuit, 320 F. Supp. 172 (D. Minn.1970), aff'd 447 F. 2d (8th Cir. 1971) considered whether the Minnesota Pollution Control Agency had authority to regulate radioactive releases by nuclear plants and whether the Commission had exclusive authority to regulate radiation hazards so as to preclude the State action. The Eighth Circuit Court of Appeals decision, which was affirmed without opinion by the Supreme Court, aff'd 405 U.S. 1035 (1972), the Court's decision included the following:

" . . . The District Court, Devitt, Chief Judge held that Congress expressed its unambiguous mandate to preempt field of regulation of radioactive releases by nuclear power plants by providing that Atomic Energy Commission (AEC) was to retain authority and responsibility with respect to construction and operation of any production or utilization facility, and Minnesota was without authority to enforce its regulations in this field . . . 1 . . . Regulation of atomic energy is proper field for congressional control in regulation of interstate commerce, providing for common defense and security, and with respect to United States property and territory. 2 . . . Mere occupation by federal government does not necessarily preclude concurrent state regulation. 3 . . . Congress may expressly or impliedly preempt subject, and may expand or contract scope of State's power to regulate in area properly subject to Congressional control. 4 . . . Congress expressed its unambiguous

mandate to preempt field of regulation of radioactive releases by nuclear power plants providing that AEC was to retain authority and responsibility with respect to the construction and operation of any production or utilization facility, and Minnesota was without authority to enforce its regulations in this field. 5 . . .Administrative interpretation of the Act, to effect that States are without authority to regulate discharge of effluents from nuclear power facilities, was entitled to much weight in determining whether Congress preempted field. 6 . . .Factors favoring a finding of preemption by Congress of field of regulation of radioactive releases by nuclear power plants include pervasiveness of federal supervision over entire field of atomic energy, fact that Congress had directed and not merely authorized AEC to effect comprehensive licensing program, fact that diverse State laws would frustrate Congressional purpose to achieve uniformity, and Supreme Court expressions to effect that State health and safety requirements at variance with or more restrictive than Federal requirements would be viewed as obstacles to achievement of Congressionally expressed objectives.” Northern States Power Company v. State of Minnesota, Court of Appeals for the Eighth Circuit, 320 F. Supp. 172 (D. Minn.1970).

The Courts, including the Supreme Court, determined that the regulatory actions attempted by the State were in direct conflict with the Atomic Energy Act of 1954 (Act), as amended, which provided the Commission with exclusive regulatory authority over reactor operations, including effluent releases.

2. Minnesota Challenges NRC Authority Over Spent Fuel at Prairie Island Nuclear Power Plant (Prairie Island): the Case of Minnesota v. U.S. Nuclear Regulatory Commission, 602 F. 2d 412 (D.C. Cir. 1979)

Subsequent to the 1972 Supreme Court ruling in the case of Northern States Power Company, Minnesota continued to challenge the Commission’s authority in areas of Federal preemption. In 1975, Northern States Power Company applied to the NRC for approval to increase the number of spent fuel rods in the existing pools at Prairie Island.

In 1977, although no State has regulatory authority for spent fuel, the Minnesota Environmental Quality Council (MEQC, formerly the MEQB) directed the Minnesota Pollution Control Agency (MPCA) to prepare an Environmental Assessment Worksheet on the reracking of the fuel. The MPCA concluded that a State environmental impact statement (EIS) should be prepared. The MEQC determined that there was no State authority to require the EIS; therefore no EIS was required.

However, during the NRC review process for the storage of spent fuel rods, the MPCA intervened in the proceedings before the NRC and sought more State control over nuclear power plants. The State challenged NRC’s Federal preemption authority, and pushed for the NRC to develop a permanent storage solution. In contentions filed with the NRC, the MPCA sought further environmental review on the basis, among several, that pool storage was not temporary and the reracking did not address long-term needs, and that certain and incremental future expansions should be anticipated and analyzed. In 1977, the NRC amended Northern State Power Company’s operating license to allow Prairie Island to expand the pool capacity to store 687 spent fuel assemblies. The State challenged the NRC licensing decision in court. The U.S. Court of Appeals upheld the NRC’s determination to allow the reracking. (See State of Minnesota v. U.S. Nuclear Regulatory Commission, 602 F. 2d 412 (D.C. Cir. 1979.))

The U. S. Court of Appeals determined that the regulatory actions attempted by the State were in direct conflict with the Atomic Energy Act which provided the Commission with exclusive regulatory authority over reactor operations, including spent fuel rods reracking.

3. Minnesota Continues to Challenge NRC Authority Over Spent Fuel at Prairie Island

According to the Minnesota Staff Report, in 1979, the utility was facing pool storage limits that could shutdown Prairie Island by 1985. Therefore, the utility sought another NRC approval to store more spent fuel rods in the pools. However, this time, because of changes in Minnesota law, the State required the Northern States Power Company to apply for a Certificate of Need (CON) from the Minnesota Energy Agency (predecessor to the now Minnesota Public Utility Commission (MPUC)) to conduct a second reracking of fuel rods in the pools. In 1981, a CON was approved to permit the utility to expand the pool storage capacity to 1582 assemblies, but limited actual pool storage to 1386 assemblies.

The actions taken by the State and Licensee were in direct conflict with the Act which provided the Commission with exclusive regulatory authority over reactor operations, including spent fuel rods reracking.

4. Minnesota Challenges Congress' Direction in the Nuclear Waste Policy Act of 1982 (NWP)

The NWP directed the development of repositories for high level waste and spent fuel. The Commission was directed to encourage and expedite the effective use of spent fuel pool storage at civilian Nuclear Power Plants, including the use of reracking, fuel compaction, transshipments and if needed, the addition of new storage capacity. The law also directed the Commission as a part of its regulation of spent fuel storage to: (1) protect public health and safety, and the environment; (2) consider economic impacts; (3) ensure continued operation of the reactor; (4) apply any applicable laws; (5) consider the public views of persons near facility; (6) develop regulations on spent fuel storage, which resulted in the regulations in 10 CFR Part 72. However, according to the Minnesota Staff Report, the State decided to take regulatory actions in direct conflict with the NWP and the Act. Excerpts from the Minnesota Staff Report provides:

“In 1984, the Minnesota Legislature, concerned about Minnesota becoming a national repository for nuclear wastes, responded to Congress and the DOE by passing its own law providing for state involvement in the siting process and over the transportation of high-level radioactive wastes. Minn. Law 1984, ch. 453. That law is known as the Radioactive Waste Management Act and is codified at Minn. Stat. §§ 116C.705 to 116C.76 (1994).”

The Minnesota Radioactive Waste Act provides the following: (1) Mn. Stat. 116C.705 *Findings*, provides the Minnesota Legislature will regulate the disposal and transportation of high level waste (HLW); (2) Mn. Stat. 116C.72 *Radioactive waste management facility* provides the Minnesota Legislature will approve the construction or operation of a radioactive waste management facility (including independent spent fuel storage installations ISFSIs); and (3) Mn. Stat. 116C.73 *Transportation of radioactive wastes into state* provides that the Minnesota Legislature will regulate the transportation of radioactive wastes (including spent

fuel) into the State.¹

The fourth statute included in the Minnesota Radioactive Waste Act established a radiological groundwater standard for HLW facilities and ISFSIs. This statute is clearly preempted by the Act and the NWSA, and it conflicts with the Commission's groundwater standards. The Minnesota Statute 116C.76 *Nuclear waste depository release into groundwater* provides:

“... HLW facilities or ISFSIs must be designed to provide a reasonable expectation that the undisturbed performance of the facility will not cause the radionuclide concentrations, averaged over any year, in groundwater to exceed: (1) five picocuries per liter of radium-226 and radium-228; (2) 15 picocuries per liter of alpha-emitting radionuclides including radium-226 and radium-228, but excluding radon; or (3) the combined concentrations of radionuclides that emit either beta or gamma radiation that would produce an annual dose equivalent to the total body of any internal organ greater than four millirems per year if an individual consumed two liters per day of drinking water from the groundwater.”

Whereas, the Commission's HLW regulations in 10 CFR § 63.331, “*Separate standards for protection of groundwater*,” adopted the U.S. Environmental Protection Agency (EPA) standards. This standard provides,

“DOE must demonstrate that there is a reasonable expectation that for 10,000 years of undisturbed performance after disposal, releases of radionuclides from waste in the Yucca Mountain disposal system into the accessible environment will not cause the level of radioactivity in the representative volume of groundwater to exceed the limits . . . (1) the combined radium-226 and radium-228, including natural background radiation, of five picocuries per liter; (2) the gross alpha activity (including radium-226, but excluding radon and uranium), including the natural background, of 15 picocuries per liter; and (3) the combined beta and photon emitting radionuclides, excluding background, of four millirems per year to the whole body or any organ based on

¹This law presents potential preemption concerns. See the Courts ruling in the case of *Illinois v. General Electric Company*, 683 F. 2d. 206 (71h Cir 1982, cert. denied, 103 S. Ct. 1891 (1983)). In this case Illinois attempted to prevent the shipment of spent fuel into the State for storage. The Court determined that the State's law placed an impressible burden on interstate commerce because of the clear discrimination against out-of-state spent fuel. The Court also held that the Atomic Energy Act preempts state regulation of the storage, and shipment for storage, interstate and intrastate alike, of spent nuclear fuel. 683 F. 2d, at 213-215. See the Courts ruling in the case of the *City of Philadelphia v. New Jersey*, 43 U.S. 617 (1978) in which the Court held that New Jersey could not confine the use of its landfill waste dump to New Jersey residents. 683 F. 2d at 214. Finally, see the case of Washington State Building and Construction Trades Council, *AFL-CIO v. Spellman*. This case involved the constitutionality of a Washington statute that closed the borders of the State to the entry of low-level radioactive waste originating outside the State, "The Washington Waste Storage and Transportation Act of 1980." The Ninth Circuit Court indicated that the State's initiative violates the Supremacy Clause because it seeks to regulate legitimate Federal activity and to avoid the preemption of the Atomic Energy Act.

drinking two liters of water per day from the representative sample.”

With regards to the groundwater standard for ISFSIs, Minnesota’s groundwater standards are less stringent than those of the Commission. The Commission’s program for the regulation of ISFSIs is aimed at providing a total containment of the waste, including preventing releases to the groundwater. Thus, the Commission has essentially a zero release limit for ISFSI. The Commission’s regulations in 10 CFR § 72.122 (b)(4), “*Protection against environmental conditions and natural phenomena,*” provide,

“ . . .if the ISFSI or MRS is located over an aquifer which is a major water resource (which may be interpreted as over any groundwater according to NUREG 1567-standard review plan for ISFSI), measures must be taken to preclude the transport of radioactive materials to the environment through this potential pathway.”

These actions taken by the State are in direct conflict with the Act and the NWPA for the following reasons: (1) Absent an Agreement, a State cannot establish groundwater radiation dose standards. Minnesota has no Agreement. (2) Even with an Agreement, States cannot regulate HLW disposal and ISFSIs because it is preempted to the Federal Government by both the Act and the NWPA. (3) The Commission in the SRM for the Policy Statement on Compatibility clarified that States that adopt regulations in areas reserved to the Commission are not compatible. This Policy Statement on Compatibility also requires radiation dose standards to be the same as those of the NRC. The Minnesota groundwater radiation dose standard is less stringent than the NRC’s. The NRC has essentially a limit of zero and the State’s limit is five picocuries per liter; 15 picocuries per liter; and/or four millirems per year to the whole body or any organ based on drinking two liters of water per day from the representative sample. (4) In accordance with the compatibility concept in Section 274 of the Act, dual regulation of byproduct, source and special nuclear materials from a radiological aspect is not permitted; thus, the State’s requirements are not in concert with the Act.

5. Minnesota Continues to Challenge Nuclear Waste Policy Act of 1982 and the Commission’s Authority over the Prairie Island

According to the Minnesota Staff Report, in 1987, the utility determined that additional storage was needed or Prairie Island would shutdown by 1994. In 1989, the utility sought to develop an ISFSI as opposed to reracking. From 1989 to 1991, the MEQB developed an EIS for the proposed ISFSI. The utility negotiated with the State, as the lead regulator for the development of the Prairie Island ISFSI instead of the Commission. The NRC was not involved in these proceedings and the utility had made no requests to the NRC regarding the development of an ISFSI.

The Minnesota Staff Report further indicates that in 1991, the State determined that exposure to radiation was a major issue associated with the storage of spent nuclear fuel. The 1991 Final EIS for the Prairie Island ISFSI contained a health risk assessment conducted by the Minnesota Department of Health (MDH), which concluded that the proposed ISFSI would deliver an annual dose of 0.35 millirem. The report noted that this dose was well below the NRC limit of 25 mrem. However, MDH determined that gamma radiation from the ISFSI would produce a lifetime risk of cancer incidence to the most exposed residents of 6 per 100,000. This risk was higher than the MDH criterion of 1 per 100,000 for carcinogenic risk from any single source of exposure to an environmental carcinogen. The radiation dose rate for the ISFSI was changed to 0.054 mrem

per year to be within the MDH cancer risk of less than 1 per 100,000.

According to the Minnesota Staff Report, in May 1991, after the finalization of the EIS, the utility applies to the MPUC for a CON. After four years of regulatory oversight from the State, the utility applied to the NRC for a site-specific ISFSI. In April 1992, the Administrative Law Judge for the MPUC approved the ISFSI, but limited the facility to 17 casks.

The actions by the State and Licensee are in direct conflict with the Act, the NWSA, and the NRC's regulatory program for the following reasons: (1) Absent an Agreement, a State cannot establish radiation dose standards. Minnesota has no Agreement. (2) Even with an Agreement, States cannot regulate ISFSIs because it is preempted to the Federal Government by both the Act and the NWSA. (3) The State's actions are in direct conflict with NRC regulations in 10 CFR 8.4, 72, and 150, which indicate that a State cannot regulate these activities. (4) The State's action conflict with NRC's regulatory program. The NRC's radiation dose standards provide an adequate level of safety based on current assessments of risks associated with radiation exposure and recommendations from national and international organizations. NRC regulations in 10 CFR § 72.104, "*Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS,*" establish an annual dose of 25 millirem per year. Whereas, the Minnesota ISFSI standard of 0.054 millirem annual radiation dose standard is considerably more stringent than that of the NRC's. The Minnesota radiation dose standard is a magnitude of 463 times more stringent than NRC's standard. (5) The application of two concurrent radiation dose standards to the same facility by a State and the NRC is dual regulation and is not in concert with Section 274 of Act.

6. Minnesota Continues to Challenge *Nuclear Waste Policy Act of 1982* and the Commission's Authority By Placing Additional Regulatory Requirements of Prairie Island Units 1 and 2

According to the Minnesota Staff Report, the Minnesota Legislature during its 1994 Session, passed the "Prairie Island Legislation," Minnesota Laws 1994, ch. 641 (codified at Mn. Stat. §§ 116C.77, 116C.771, 116C.772, 116C.773, 116C.774, 116C.775, 116C.776, 116C.777, 116C.778, 116C.779, 116C.80, 216B.2423, 216B.2424, 216B.2425, 216B.243, 216B.244, and 216C.051). Through these series of laws, not only did Minnesota subject Prairie Island to dual regulation, but the State's requirements, in most instances, were far more stringent than those of the Commission.

The Prairie Island Legislation statutorily implemented the MPUC decision to limited the number of casks stored at the Nuclear Power Plant to only 17, while the NRC operating licenses authorized 48, which were issued in 1972 and 1973 (Mn. Stat. 116C.771 *Additional cask limitations*). In addition, the Legislation placed a number of conditions on the storage of the 17 casks. Initially, it approved the storage of five casks. To store the next four casks, the utility had to take steps to establish an alternative away-from-reactor ISFSI and purchase 100 megawatts of electricity from wind powered systems by December 31, 1996. To store the next eight casks, the utility had to purchase 225 megawatts of electricity from wind powered systems and 50 megawatts of electricity from biomass powered systems (Mn. Stat. 216B.2423 *Wind power mandate* and Mn. Stat. 216B.2424 *Biomass power mandate*), and have an away-from-reactor ISFSI operational or under construction by June 1, 1999. The Legislation also required the signing of a contractual Agreement between the utility and Governor before any casks could be stored. As a part of the contractual requirements, the utility was required to: (1) submit a

reevaluation of all alternatives to dry cask storage; (2) submit a detailed plan for the phase-out of all nuclear power generated by the utility; (3) and submit a decommissioning plan for the storage casks. (Mn. Stat. 116C.772 *Public utility responsibilities* and Mn. Stat. 116C.773 *Contractual Agreement*.)

This Legislation also: (1) approved of ISFSIs at Monticello Nuclear Power Plant (Monticello) and Prairie Island; (2) required Prairie Island to ship dry casks off site before shipping from the spent fuel storage pool; and once waste was shipped, the cask was to be decommissioned and removed from use. (Mn. Stat. 116C.774 *Authorization* and Mn. Stat. 116C.775 *Shipment priorities; Prairie Island*.)

Minnesota Statute 116C.776 *Alternative cask technology for spent fuel storage*, provided the MPUC with authority to determine the type of cask used for spent fuel transportation and storage at Prairie Island. If the MPUC determined that a dual purpose cask was economically feasible, it would order their use, have the waste moved from the storage casks, and placed in the dual purpose cask. In addition, the law stipulated that the dual-purpose casks must have the same total storage capacity as the original cask, and the casks at Prairie Island had to remain at 17. Minnesota Statute 116C.778 *Reracking* limited the reracking of spent fuel at the Prairie Island to three, subject to State review and approval. Minnesota Statute 216B.243, *Certificate of need for large energy facility* required the utility to obtain approval from the MPUC for any additional spent fuel storage through the CON process. Minnesota Statute 116C.779 *Funding for renewable development* required as a condition of the storage of the 17 casks, the utility had to pay \$500,000 per year for each spent fuel cask stored at the facility into an account for the development of renewable energy. In addition, Minnesota Statute 216B.244, *Nuclear Plant Capacity Requirements*, required the shutdown of the reactor if the annual load capacity was less than 55 percent for three consecutive years.

As noted above, in 1994 the Minnesota Legislature limited the storage of spent fuel at Prairie Island to 17 casks. The State thought this would keep the Nuclear Power Plant operating until 2001. However, the storage authorized by the State was not sufficient. In 2000, the MPUC issued a CON approving 195 temporary storage spaces in the cooling pool to provide for a full core offload. Prior to the MPUC's approval, the full core offload spaces were located in the permanent storage spaces in the cooling pools. After the approval, an additional 195 permanent storage spaces, approximately five casks of volume, were available. However, the utility could not use this space because the State by legislation restricted the facility to 17. The plant was facing a potential shutdown. The utility goes to the State instead of the NRC for approval of these actions. (See: <http://www.house.leg.state.mn.us/hrd/pubs/nucxcel.pdf>.)

In 2003, Prairie Island was again faced with storage concerns. The utility had been authorized in 1973 for 48 casks by its NRC operating license. However, it was not until the passage of the Prairie Island Legislation of 2004 that the utility was allowed to follow the provisions of its license and store up to 48 casks (Mn. Stat. 116C.83 *Authorization for additional dry cask storage*).

The 2004 Legislation also provided: (1) that all future spent fuel storage at Prairie Island and Monticello had to be approved by the MPUC through the CON process; (2) the authorization of sufficient dry cask storage to allow Prairie Island to operate until the end of their current licenses (2013 for reactor Unit 1 and 2014 for reactor Unit 2); (3) that the storage of spent nuclear fuel in the pool and in dry casks at Prairie Island is to be managed to facilitate the shipment and

continued operation of the plant; (4) that the MPUC through the CON process had the authority to shutdown the reactor; (5) any decision on a CON must be held until the Minnesota Legislature is in session, since they must ratify the Certificate; (6) that the storage capacity at facilities was limited to spent fuel storage generated by Minnesota Nuclear Power Plants and stored on the site of that facility; (7) required ISFSIs to operate in accordance with the water standards in Mn. Stat. 116C.76 (As discussed earlier, these standards are not compatible with those of the Commission); (8) required that the siting, construction, and operation of Minnesota ISFSIs be subject to all the environmental review and protection of Minnesota provisions in 116C and chapters 115, 115B, 116, 116B, 116D, and 216B, and rules associated with those chapters; and (9) an EIS is required for the construction, operation or expansion of an ISFSI, which must be reviewed and approved by the MEQB.

The actions by the State are in direct conflict with the Act, the NWPA, and the NRC's regulatory program (e.g. the NRC issued Prairie Island operating license) for the following reasons: (1) Absent an Agreement, a State cannot regulate activities involving byproduct, source, and special nuclear materials, including the setting of dose limits for an ISFSI. Minnesota had no Agreement when the dose limit was established. (2) Even with an Agreement, States cannot regulate ISFSIs because it is preempted to the Federal Government by both the Act and the NWPA. (3) The State's actions are in direct conflict with NRC regulations in 10 CFR 8.4, 72, and 150, which indicate that a State cannot regulate these activities. (4) The State's action conflict with the responsibilities Congress gave to NRC in the NWPA, which directed the Commission to encourage and expedite the effective use of spent fuel pool storage at civilian Nuclear Power Plants, including the use of reracking, fuel compaction, transshipments and if needed, the addition of new storage capacity. The law also directed the Commission as a part of its regulation of spent fuel storage to: (a) protect public health and safety, and the environment; (b) consider economic impacts; (c) ensure continued operation of the reactor; (d) apply any applicable laws; (e) consider the public views of persons near facility; and (f) develop regulations on spent fuel storage, which resulted in 10 CFR Part 72, which provide an adequate level of protection. (5) The application of two concurrent radiation dose standards to the same facility by a State and the NRC is dual regulation and is not in concert with §274 of the Act.

APPENDIX C TO ATTACHMENT 4

TEAM LEADER'S LETTER TO GOVERNOR

DRAFT

The Honorable Tim Pawlenty
Governor of Minnesota
St. Paul, Minnesota 55155

Dear Governor Pawlenty:

On July 6, 2004, you submitted an application to the U.S. Nuclear Regulatory Commission (NRC), requesting an Agreement between the NRC and the State of Minnesota under Section 274 of the Atomic Energy Act of 1954, as amended (Act). The letter requests that NRC authority be discontinued and assumed by the State in the following areas: (1) byproduct materials as defined in Section 11e.(1) of the Act; (2) source materials; and (3) special nuclear materials in quantities not sufficient to form a critical mass.

In the process of reviewing the Minnesota application, NRC staff discovered statutes and regulations areas potentially reserved to the NRC. For example, these statutes include the Radioactive Waste Management Act codified at Mn. Stat. §§ 116C.705 to 116C.76. It is unclear how these statutes are in concert with the Act and NRC's regulatory program. The Act prohibits State or local governments from regulating the operations of production or utilization facilities from a radiological health and safety standpoint, including any high level waste generated from these facilities.

Under Section 274 of the Act, ". . . the Commission is authorized to enter into Agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission . . . with respect to . . . special nuclear materials in quantities not sufficient to form a critical mass. . ." However, under such Agreements, the NRC retains authority and responsibility with respect to regulation of the construction and operation of any production or utilization facility. In addition, under the Act, the NRC may enter into an Agreement only if the State program is adequate to protect the public health and safety and compatible with the NRC's regulatory program.

Before entering into an Agreement with Minnesota, the NRC must be satisfied that the Minnesota Program for the regulation of material under the Agreement will not conflict with the Act or intrude into areas of exclusive NRC jurisdiction. We would like to discuss this issue further. My staff contact is: Mr. Paul H. Lohaus, Director, Office of State and Tribal Programs. He can be reached at (301) 415-3340.

Sincerely,

Nils J. Diaz