

NUCLEAR REGULATORY COMMISSION

State of Texas: Discontinuance of Certain Regulatory Authority and Responsibility Within the State

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of amended agreement with the State of Texas.

SUMMARY: Notice is hereby given that on March 12, 1982, the Honorable Nunzio J. Palladino, Chairman of the Nuclear Regulatory Commission, and that on March 24, 1982, the Honorable William P. Clements, Jr., Governor of the State of Texas, signed an Amendment to the existing section 274b. Agreement between NRC and the State of Texas pursuant to Section 274 of the Atomic Energy Act of 1954, as amended. The amendment permits the State to continue to regulate byproduct material as defined in section 11e.(2) of the Act (uranium mill tailings) in conformance with the requirements of section 274o. of the Act.

The proposed Amendment to the existing section 274b. Agreement was published in the **Federal Register** for public comment for four consecutive weeks beginning December 8, 1981 (46 FR 60075-60079). A minor change to the introductory text was made to conform the Amendment to the requirements of the "Stratton-Schmitt" amendment (Pub. L. 97-88). The amended agreement was modified to delete the following paragraph:

Whereas, it is necessary to enter into this amendment in order to implement new requirements of Section 274 of the Act which become fully effective on November 8, 1981: and,

Public Law 97-88 makes it clear that such an amended agreement is not "necessary" for the State to continue to regulate uranium mill tailings after November 8, 1981. The following was inserted in its place:

Whereas, the Governor of the State has requested this amendment in accordance with Section 274 of the Act; and,

The Amendment is published in accordance with the requirements of Pub. L. 86-373. A copy of the consolidated version of the Agreement is available at the Office of State Programs.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION

Amendment To Agreement Between The United States Nuclear Regulatory Commission And The State Of Texas For Discontinuance Of Certain Commission Regulatory Authority And Responsibility Within The State Pursuant To Section 274 Of The Atomic Energy Act Of 1954, As Amended

Whereas, the United States Atomic Energy Commission¹ (hereinafter referred to as the Commission) entered into an Agreement (hereinafter referred to as the Agreement of January 10, 1963) with the State of Texas under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), which Agreement became effective on March 1, 1963 and provided for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Governor of the State has requested this amendment in accordance with section 274 of the Act; and

Whereas, the Commission found on February 26, 1982, that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of section 274o. of the Act and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

¹Under the provisions of the Energy Reorganization Act of 1974, the regulatory functions formerly carried out by the Atomic Energy Commission are now carried out by the Nuclear Regulatory Commission as of January 19, 1975.

Whereas, this amendment is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of January 10, 1963, is amended by adding "as defined in section 11e.(1) of the Act;" after the words "byproduct materials" in paragraph A, by redesignating paragraphs B. and C. as paragraphs C. and D., and by inserting the following new paragraph immediately after paragraph A.:

"B. Byproduct materials as defined in section 11e.(2) of the Act;"

Section 2. Article III of the Agreement of January 10, 1963, is amended by inserting "A." before the words "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., and by adding the following at the end thereof:

"B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Act:

"1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such materials have been met.

"2. The Commission reserves the authority to establish minimum standards governing reclamation, long term surveillance or maintenance, and ownership of such byproduct material. Such reserved authority includes:

"a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site:

"b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

"c. The authority to permit use of surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to subparagraph B.2.b., of this Article;

"d. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary: and

"e. The authority to enter into the arrangements as may be appropriate to assure Federal long term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States."

Section 3. Article III of the Agreement of January 10, 1963, is amended by inserting "otherwise licensable by the State under Article I of this Agreement" after the words "special nuclear material."

Section 4. Article VII of the Agreement of January 10, 1963, is amended by inserting "all or part of after the words "terminate or suspend." by inserting "(1)" after the words "finds that," and by adding at the end before the period the following:

“, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with the provisions of section 274 of the Act.”.

Section 5. Article VIII of the Agreement of January 10, 1963, is amended by redesignating it Article IX and by inserting a new Article VIII as follows:

“In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of section 274o. of the Act. If, in such licensing and regulation, the State requires financial surety arrangements for the reclamation or long term surveillance or maintenance of such material.

"A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

"B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long term management of such byproduct material and its disposal site.".

This amendment shall become effective on March 24, 1982.

Done at Austin, State of Texas, in triplicate, this 24th day of March 1982.

For The State of Texas William P. Clements, Jr.,

Governor.

Done at Washington, District of Columbia, in triplicate, the 12th day of March 1982.

For The United States Nuclear Regulatory Commission.

Nuzio J. Palladino,

Chairman.

Dated at Bethesda, Maryland, this 1st day of April, 1982.

For The United States Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

For the United States Nuclear Regulatory Commission.

[FR Doc. 82-9546 Filed 4-7-82; 8:45 am]

BILLING CODE 7590-01-M