



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

May 18, 2009

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-09-0065

TITLE: PROPOSED AGREEMENT BETWEEN THE STATE OF NEW JERSEY AND THE COMMISSION PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of May 18, 2009.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in cursive script, reading "Annette Vietti-Cook".

Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko  
Commissioner Lyons  
Commissioner Klein  
Commissioner Svinicki  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-09-0065

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X					5/8/09
COMR. LYONS	X				X	5/4/09
COMR. KLEIN	X				X	5/7/09
COMR. SVINICKI	X				X	5/14/09

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and Commissioners Lyons, Klein, and Svinicki provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on May 18, 2009.

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER JACZKO  
SUBJECT: SECY-09-0065 – PROPOSED AGREEMENT BETWEEN  
THE STATE OF NEW JERSEY AND THE COMMISSION  
PURSUANT TO SECTION 274 OF THE ATOMIC  
ENERGY ACT OF 1954, AS AMENDED

Approved X Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached \_\_\_\_\_ None X

  
\_\_\_\_\_  
SIGNATURE

5  
04/8 /2009  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes X No \_\_\_\_\_

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER LYONS  
SUBJECT: SECY-09-0065 – PROPOSED AGREEMENT BETWEEN  
THE STATE OF NEW JERSEY AND THE COMMISSION  
PURSUANT TO SECTION 274 OF THE ATOMIC  
ENERGY ACT OF 1954, AS AMENDED

Approved X <sup>w/edits</sup> Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached X None \_\_\_\_\_

  
Peter B. Lyons  
\_\_\_\_\_  
SIGNATURE

5/4/09  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes X No \_\_\_\_\_

**Commissioner Lyons' Comments on SECY-09-0065**

I approve the staff recommendation to publish the proposed agreement with the State of New Jersey in the Federal Register once a week for four consecutive weeks, subject to the attached edits.

I appreciate the work of the NRC and State of New Jersey staff in developing this proposed Agreement. The proposed agreement reflects the culmination of the tremendous effort by both NRC and the State of New Jersey staff over a 2-year period of time. Both NRC and New Jersey staff should be commended for their efforts.

 5/4/09  
Peter B. Lyons Date

NUCLEAR REGULATORY COMMISSION

State of New Jersey: NRC Staff Assessment of a Proposed Agreement  
Between the Nuclear Regulatory Commission and the State of New Jersey

[NRC-2009-0142]

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the State of New Jersey.

SUMMARY: By letter dated October 16, 2008, Governor Jon S. Corzine of New Jersey requested that the U. S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of New Jersey (State or New Jersey) as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and the State would assume, portions of the Commission's regulatory authority exercised within the State. As required by the Act, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of an assessment by the NRC staff of the State's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the State's program, and the State's program staff, as discussed in this notice.

The proposed Agreement would exempt persons who possess or use certain radioactive materials in the State from portions of the Commission's regulatory authority. The Act requires that the NRC publish those exemptions. Notice is hereby given that the pertinent exemptions  
G:\Votes\SECY\2009\SECY-09-0065 New Jersey as an Agreement State draft FRN.doc

have been previously published in the *Federal Register* and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period ends (insert 30 days after date of **first** publication). Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the comment period ends.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rulemaking and Directives Branch, MS TWB-05-B01M, Division of Administrative Services, Office of Administration, Washington, DC 20555-0001. Members of the public are invited and encouraged to submit comments electronically to <http://www.regulations.gov>. Search on Docket ID: [NRC-2009-0142] and follow the instructions for submitting comments.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397-4209, or (301) 415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O-1-F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of New Jersey including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room-ADAMS Accession Numbers: ML090510713, ML090510708, ML090510709, ML090510710,

(h) Regulatory Administration. The State is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The State has also adopted administrative procedures to assure fair and impartial treatment of license applicants. State law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. State Statute contains a provision that laws provides for the recognition of existing NRC and Agreement State licenses. New Jersey has a process in place for the transition of active NRC licenses. Upon completion of the Agreement, all active NRC licenses issued to facilities in New Jersey will be recognized as NJDEP licenses. New Jersey will issue a brief licensing document that will include licensee specific information, as well as an expiration date, with a license condition that authorizes receipt, acquisition, possession, and transfer of byproduct, source, and/or special nuclear material; the authorized use(s); purposes; and the places of use as designated on the NRC license. The license condition will also commit the licensee to conduct its program in accordance with the NRC license and commitments. The NJDEP rules will govern unless the statements, representations and procedures in the licensee's application and correspondence are more restrictive than the NJEP rules. NJDEP will then issue full NJDEP licenses, over approximately 13 months.

The State also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. New Jersey regulations, in N.J.A.C. 28:51.1, provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits the State to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the

**Commissioner Lyons' proposed edits.**

**DRAFT ASSESSMENT**

of the proposed

**NEW JERSEY PROGRAM FOR THE REGULATION OF AGREEMENT MATERIALS**

as described in the

**REQUEST FOR AN AGREEMENT**

This Assessment examines the proposed State of New Jersey Program with respect to the ability of the program to regulate the possession, use, and disposal of radioactive materials subject to the Atomic Energy Act of 1954 (Act), as amended.<sup>1</sup> This Assessment was performed using the criteria in the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (referred to below as the "criteria")<sup>2</sup> using the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700 "Processing an Agreement". Each criterion, and the staff assessment related thereto, is addressed separately below.

**OBJECTIVES**

1. **Protection. A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.**

The proposed Agreement State Program for the State for regulating radioactive materials is located in the Bureau of Environmental Radiation (BER) within the New Jersey Department of Environmental Protection (NJDEP). The NJDEP is a cabinet level Department with the Commissioner reporting directly to the Governor of New Jersey.

The NJDEP has the statutory authority to establish the Agreement State Program and to implement it by the Radiation Protection Act (N.J.S.A. 26:2D-1), the Administrative Procedures Act (N.J.S.A.52:14B-1 et seq.), and the Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act.

The authorities to issue, amend, suspend or revoke licenses; place conditions and to issue orders; or assess administrative fines is vested by Statute in the Radiation Protection Act, N.J.S.A. 26:D-7 and 26:D-9.

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<sup>1</sup>According to paragraph (a) of Section 274, the radioactive materials subject to the Act are byproduct, source and special nuclear materials.

<sup>2</sup>NRC Statement of Policy published in the Federal Register, January 23, 1981 (46 FR 7540-7546), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the Federal Register, July 21, 1983 (48 FR 33376).

The NRC staff verified that the State's Agreement State Program design for distributing regulatory responsibilities to the program staff is similar to designs used successfully in other Agreement States, and that all necessary program elements have been addressed.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

## RADIATION PROTECTION STANDARDS

2. **Standards. The State regulatory program shall adopt a set of standards for protection against radiation which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.**

In conjunction with the rulemaking authority vested in the New Jersey Commission on Radiation Protection by New Jersey Statute 26:2D-7 of the Radiation Protection Act, the BER has the requisite authority to promulgate rules for protection against radiation.

The NRC staff verified that the State adopted the relevant NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150 into State Regulations, New Jersey Administrative Code (N.J.A.C.) Title 7 Section 28, Radiation Protection Programs. The State has adopted an adequate and compatible set of radiation protection regulations which apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116. State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

3. **Uniformity of Radiation Standards. It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.**

The State, by statute, must promulgate and enforce rules for the regulation of byproduct, source, and special nuclear material that are in accordance with Section 274 of the Act,

as amended. The NRC staff verified that the State adopted regulations compatible with 10 CFR Part 20.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

4. **Total Occupational Radiation Exposure. The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.**

The NRC staff review verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Part 20, including Subpart C, the occupational dose limits and Subpart D, the dose limits to individual members of the public. State licensees are required to consider the radiation doses to individuals from all sources of radiation, except background radiation and radiation from medical procedures. Like NRC licensees, State licensees are required to consider the radiation dose whether the sources are licensed or unlicensed.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

5. **Surveys, Monitoring. Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.**

NRC requires surveys and monitoring pursuant to Subpart F of 10 CFR Part 20. The NRC staff review verified that the State has adopted regulations compatible with 10 CFR Part 20 Subpart F. Therefore, State licensees are required to conduct surveys and personnel monitoring to the same standards required of NRC licensees.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

6. **Labels, Signs, Symbols. It is desirable to achieve uniformity in labels, signs and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.**

The NRC staff review verified that the State has adopted regulations compatible with the NRC regulations in Subpart J of 10 CFR Part 20. Therefore, the radiation labels, signs, symbols, and the posting and labeling requirements in the State regulations are compatible with those contained in the NRC regulations.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

7. **Instruction. Persons working in or frequenting restricted areas shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, Section 19.16 and to be represented during inspections as specified in Section 19.14 of 10 CFR 19.**

The NRC staff review verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Part 19.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

8. **Storage. Licensed radioactive material in storage shall be secured against unauthorized removal.**

The NRC staff review verified that the State has adopted regulations compatible with the NRC regulations in Subpart I of 10 CFR Part 20.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

9. **Radioactive Waste Disposal. (a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority. Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR 20. The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.**

The NRC staff review confirmed that the State has adopted regulations that are compatible with the NRC regulations in Subpart K of 10 CFR Part 20 - Waste Disposal. These regulations deal with general requirements for waste disposal and are applicable to all licensees.

The staff concludes that Criterion 9(a) is satisfied.

**(b) Land Disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons, which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR Part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (Section 151(a)(2), Pub. L. 97-425).**

The NRC staff verified that the State has adopted regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements, and applicable supporting sections set forth in 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste."

The staff concludes that Criterion 9(b) is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

10. **Regulations Governing Shipment of Radioactive Materials. The State shall, to the extent of its jurisdiction, promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U. S. Department of Transportation and other agencies of the United States**

**whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.**

The NRC staff verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Part 71. The State's regulations specifically exempt areas of exclusive NRC jurisdiction.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

11. **Records and Reports. The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.**

The NRC staff review verified that the State has adopted regulations compatible with the NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150. The records and reports referenced in Criterion 11 are regulatory requirements in these parts. The State has adopted the necessary record and reporting requirements.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

12. **Additional Requirements and Exemptions. Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.**

The NRC staff has verified that the State has adopted a regulation which is compatible with 10 CFR 30.34, Terms and conditions of licenses, in N.J.A.C. 7:28-51.1. The State regulations provide the radiation control agency authority to impose, by order or license condition, additional health and safety requirements beyond the requirements specified in law and in the rules. The agency also has legal authority to grant reasonable and

necessary exceptions to the regulatory requirements, either by order or by license condition.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

### PRIOR EVALUATION OF USES OF RADIOACTIVE MATERIALS

13. **Prior Evaluation of Hazards and Uses, Exceptions. In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards, and the capability of the user or possessor prior to his receipt of materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the processor and user. These categories fall into two groups: those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating specific use.**

The State has adopted regulations containing regulatory requirements for applying for and issuing licenses, which are compatible with NRC's regulations.

The NRC staff review confirmed that the State's regulations provide that only NRC may issue a license authorizing the distribution of Agreement materials that will subsequently be exempt from regulatory control.

Since Criterion 13 was adopted, the Commission has determined that the regulatory authority to conduct safety evaluations of sealed sources and devices may be retained by the NRC, unless the State requests assumption of the authority and has in place an adequate and compatible program to implement the authority. The State has decided not to seek authority for evaluation of sealed sources and devices.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS:

ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

14. **Evaluation Criteria. In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing regulatory guides for various categories of licensed activities.**

The NRC staff review determined that the State has established a series of procedures, checklists, and forms to be used in evaluating proposals for radioactive materials use. These will be used in addition to the licensing guidance in the NRC's NUREG-1556 series. In addition, the State developed administrative licensing procedures that define the review process for a new license application, amendment, renewal, and license termination. The State licensing procedures are similar to NRC procedures.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

15. **Human Use. The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.**

The NRC staff verified that the State has adopted compatible regulations to the NRC regulations in 10 CFR Part 35. Therefore the State's regulations include training and experience requirements for use of radioactive material which are equivalent to the NRC requirements.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

## INSPECTION

16. **Purpose, Frequency. The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.**

The NRC staff confirmed that the State has statutory authority to conduct inspections of licensees. The State has adopted regulations compatible with equivalent parts of the NRC regulations containing provisions relating to inspections and tests.

The State has adopted a schedule for inspection of licensees at least as frequent as the schedule used by NRC. The State staff has developed internal procedures and accompanying forms for the inspection areas which cover scheduling, preparation, performance basis, tracking and documentation of inspection results. The inspection procedures are similar to NRC procedures.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

17. **Inspections Compulsory. Licensees shall be under obligation by law to provide access to inspectors.**

The NRC staff review confirmed that State law provides authority for radiation control program inspectors to enter public or private property at all reasonable times for the purpose of investigating conditions related to radiation use.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statute: 26:2D-9. State Regulations N.J.A.C. Title 7 Chapter 28.

18. **Notification of Results of Inspection. Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.**

The NRC staff review determined that the State has adopted procedures to convey a copy of the formal inspection report to the licensees, both when violations are found, and when no violations are found. The procedures identify the staff responsible and specify

the time limit for preparing the inspection report, the process for management review and approval, and provide instructions for distribution of the report to the licensee and to the State's official files.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2. State Regulations N.J.A.C. Title 7 Chapter 28.

## ENFORCEMENT

19. **Enforcement. Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.**

The NRC staff review confirmed that the State is authorized by law to enforce the State's regulations using a variety of sanctions, including the imposition of administrative fines, the issuance of orders to suspend, modify or revoke licenses, and any other action deemed appropriate by the Program. The Program may assess civil penalties in accordance with State Law and Department regulations.

The Program has adopted policies and procedures to implement the enforcement authority. The State enforcement procedures are similar to the NRC procedures with regard to the use of severity levels for violations.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statutes: 26:2D-1, 26:2D-2, 26:2D-3, 26:2D-4, 26:2D-5, 26:2D-6, 26:2D-7, 26:2D-8, 26:2D-9, 26:2D-9.1, 26:2D-9.2, 26:2D-13, 26:2D-22, 26:2D-23.4, 26:2D-36, 26:2D-57, 26:2D-77. State Regulation: N.J.A.C. 7:28-2.13.

## PERSONNEL

20. **Qualifications of Regulatory and Inspection Personnel. The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspections of licensees must be conducted by**

persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments (their selection, use and calibration), laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State regulatory staff may need to be supplemented by consultants of other State agencies with expertise in geology, hydrology, water quality, radiobiology and engineering disciplines.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life science, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training - radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which are out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in the field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, the trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories, proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

**It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.**

Based on the review of the organizational charts and position descriptions for the Bureau of Environmental Radiation (BER), the BER training and qualification plan, and the curricula vitae for the current staff members, the NRC staff concludes that the BER has a staffing plan that provides a sufficient number of adequately trained and qualified technical staff.

a. Assessment of the Agreement Materials Staffing

There are about 500 NRC specific licenses in the State. The State currently conducts a licensing and inspection program for about 500 naturally occurring or accelerator-produced radioactive material (NARM) users. About 300 of these NARM users currently have an NRC license. When the NRC and State licenses are combined, there will be approximately 700 specific licenses in New Jersey. Additionally, there are over 400 general license registrations.

The staff of the Radioactive Materials Section (RMS), in BER, will be responsible for implementing the majority of the Agreement State Program. The Radiological Assessment Section, in BER, will be responsible for the remainder of the Agreement State Program, including decommissioning, low-level radioactive waste disposal site regulation, and will provide assistance with nuclear medicine licensees, increased controls and general license registration.

The State conducted an analysis of the expected workload to establish an appropriate staffing plan. The State estimates that there will be approximately 700 specific licenses after the NRC and State licenses are combined. The State has determined that 13.25 FTE (full-time equivalent) is adequate for operating the Agreement State Program. This projection is based on data from the NRC, Agreement States, and BER's own internal information.

At the time of the NRC review of the application, there was one vacant technical position in BER to support the Agreement State Program. This position has been filled and the individual was on staff April 15, 2009. There is currently 9.5 FTE (technical staff) devoted to support the Agreement State Program, which includes the Supervisor of the RMS. The RMS Supervisor will provide the day-to-day supervision of the Agreement State Program. The Supervisor plans on devoting 100% of his time to the Agreement State Program, including management review of licensing and inspection actions, personnel responsibilities, rule development, and accompaniment of inspectors for annual management review. The BER Bureau Chief will ~~spend~~ devote 35% of her time to the Agreement State Program, including management review of certain actions, personnel responsibilities, and rule development. There are two staff members that provide 2 FTE of administrative support to the program and one staff member that will spend 40% of her time providing management assistance to the Agreement State Program. The staff will work in all aspects of the materials program, including licensing, inspection, enforcement, emergency response, and rule development.

The NRC staff concludes that BER has an adequate number of staff to transition to and meet the anticipated needs of the Agreement State Program.

The staff concludes that criterion 20(a) is satisfied.

b. Assessment of Staff Qualifications

The NRC staff review considered the qualifications of the individuals currently on the BER staff that would be involved in the Agreement State Materials Program and the procedures for training and qualifying new staff members.

Under the proposed Agreement, the BER will implement the Agreement State Program. The Bureau Chief of BER has a Bachelor of Arts degree in Biology and a Master of Science degree in Radiation Science. She has 28 years experience, as a radiation physicist and in management, with NJDEP within a variety of program areas including radioactive materials, decommissioning/site remediation, radioanalytical laboratory program, and emergency response.

The Supervisor of RMS will be responsible for the Program's administration and will provide the immediate day-to-day supervision of the Agreement State Materials Program. The Supervisor of RMS has a Bachelor of Science in Biology, a Master of Science in Radiation Science, and has a Nuclear Medicine Certification. He has about 25 years of experience in all aspects of the NJDEP programs – licensing and inspection of NARM licenses, radiation measurements, calibration, laboratory design, and emergency response. Additionally, he has experience as a nuclear medicine technologist, responsible for the preparation and use of radiopharmaceuticals for diagnostic and therapeutic purposes and the operation of clinical nuclear medicine instruments.

All other staff members have a Bachelor of Science degree in one of the following subject areas: environmental science, nuclear engineering, earth sciences, chemistry, physics, and biochemistry, with one person also possessing a Bachelor of Science degree in mathematics. Additionally, 5 staff members have a Master of Science in Radiation Science, one staff member has a Master of Business Administration, and another has begun graduate work in environmental policy studies.

The majority of the BER technical staff has extensive health physics and radiation science experience, within NJDEP as well as work in the private sector. Staff has work experience in nuclear engineering; as a radiation safety officer in medical and radiopharmaceutical facilities, environmental protection and remediation; and with radiopharmaceutical production. The technical staff has completed or is scheduled to complete the NRC recommended core courses, or **has** ~~have~~ received waivers from BER based on prior training and experience.

The BER has had a strong NARM program for many years, regulating approximately 500 NARM licensees; consequently, the majority of staff currently with the program has extensive licensing and inspection experience. The BER technical staff has accompanied NRC staff on inspections of NRC licensees in the State, and is continuing to accompany NRC on more inspections in preparation for the transition to an Agreement State.

NRC staff believes that the BER technical staff identified by the State to work in the Agreement State Program are trained in accordance with the BER plans, have sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and techniques of inspecting licensed users of radioactive materials.

The NRC staff concludes that the proposed BER has a sufficient number of adequately trained staff to transition to the Agreement State Materials Program and to meet program needs.

The staff concludes that criterion 20(b) is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116).

21. **Conditions Applicable to Special Nuclear Material, Source Material and Tritium. Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms, (1) transfers of special nuclear material, source material and tritium, and (2) periodic inventory data.**

The NRC staff review did not note any aspects of the State's Agreement State Program that could potentially interfere with duties imposed on a holder of materials by the NRC. In addition, the State's regulations specifically exempt areas of exclusive NRC or other Federal jurisdiction from State regulation. The staff is therefore satisfied that the State will not interfere with duties imposed on the holder of materials by the NRC.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

22. **Special Nuclear Material Defined. Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium 233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all**

kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams PU)}}{200} = 1$$

The NRC staff determined that the State's definition of special nuclear material in quantities not sufficient to form a critical mass in N.J.A.C 7:28-62.1, is compatible with that of the Commission's.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

#### ADMINISTRATION

23. Fair and Impartial Administration. **State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:**
- a. **Formulation of rules of general applicability;**
  - b. **Approving or denying applications for licenses or authorization to process and use radioactive materials; and**
  - c. **Taking disciplinary actions against licensees.**

The NRC staff review confirmed that the BER is bound by general statutory provisions with respect to providing the opportunity for public participation in rulemaking, licensing actions, and disciplinary actions. These general statutory provisions also apply to the protection of personnel radiation exposure records from public disclosure, maintaining the confidentiality of allegers, and administrative and judicial requirements for requesting and holding hearings on enforcement matters.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statute: N.J.S.A. 52:14B-1 and 2 et seq. and N.J.S.A. 26:2D-7. State Regulation: N.J.A.C. Title 7 Chapter 28 and N.J.A.C. 7:1D-1.1

24. State Agency Designation. **The State should indicate which agency or agencies will have authority for carrying on the program and should provide the NRC with a**

**summary of that legal authority. There should be assurances against duplicateregulation and licensing by State and local authorities, and it may be desirable that there be a single or central regulatory authority.**

The NRC staff determined that the New Jersey Department of Environmental Protection is designated by State Statute 26:2D-9 to be the lead agency for carrying out the terms of the proposed Agreement, which will assure against duplicate regulations or licensing by State and local authorities. The staff determined that the State regulations specifically exclude any areas in which the jurisdiction of the NRC or another Federal agency is exclusive, gives sufficient assurance against duplicate regulation between the State and the NRC in the regulation of Agreement Material.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statute: 26:2D-3, 26:2D-6, 26:2D-8, 26:2D-9 and 26:D-17.

25. Existing NRC Licenses and Pending Applications. **In effecting the discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect, for an appropriate period of time under State Law, existing NRC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier reexamination or termination of the license.**

The NRC staff review confirmed that State Statute 26:2D-9 contains a provision that provides for recognition of existing NRC and Agreement State licenses. State procedure BER 3.08, "License Transition from NRC to New Jersey," addresses the transfer of NRC licenses to the State. N.J.A.C. 7:28-62.1 provides a process for recognition of other Agreement State licenses and N.J.A.C. 7:28-64.6 establishes the fees for reciprocity of other State licenses.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, ML090770116) State Regulation N.J.A.C. Title 7 Chapter 28.

26. Relations with Federal Government and Other States. **There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.**

The NRC staff review verified that the proposed Agreement commits the State to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the State will continue to be compatible with the NRC's program for the regulation of agreement materials.

In a revised Policy Statement on Adequacy and Compatibility of Agreement State Programs (published September 3, 1997 at 62 FR 46517), the Commission determined that providing reports to NRC of Agreement State licensee incidents, accidents and other significant events is a matter of compatibility. The State has adopted procedures to provide such reports to NRC.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statute: N.J.S.A. 26:D-9. State Regulations: N.J.A.C. Title 7 Chapter 28.

27. **Coverage, Amendments, Reciprocity. An amendment providing for discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State may relate to any one or more of the following categories of materials within the State, as contemplated by Public Law 86-373 and Public Law 95-604:**
- a. **Byproduct material as defined in Section 11e(1) of the Act,**
  - b. **Byproduct material as defined in Section 11e(2) of the Act,**
  - c. **Byproduct material as defined in Section 11e(3) of the Act,**
  - d. **Byproduct material as defined in Section 11e(4) of the Act,**
  - e. **Source material,**
  - f. **Special nuclear material in quantities not sufficient to form a critical mass,**
  - g. **Low-level wastes in permanent disposal facilities, as defined by statute or Commission rules or regulations containing one or more of the materials stated in a, c, and d above but not including byproduct material as defined in Section 11e(2) of the Act;**

**but must relate to the whole of such category or categories and not to a part of any category. If less than the five categories are included in any discontinuance of jurisdiction, discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State of the others may be accomplished subsequently by an amendment or by a later Agreement.**

**Arrangements should be made for the reciprocal recognition of State licenses and NRC licenses in connection with out-of-jurisdiction operations by a State or NRC licensee.**

The NRC staff review verified that the proposed Agreement provides for the Commission to relinquish, and the State to assume, regulatory authority over the types of material defined in categories a, c, d, e, f, and g above.

Since this criterion was adopted, the Commission has determined that the Agreement States may assume the authority to evaluate the safety of sealed sources and devices to be distributed in interstate commerce as a separate portion of the Agreement, or to allow NRC to retain that authority. The State has chosen not to assume that authority.

The proposed Agreement stipulates the desirability or reciprocal recognition of NRC and other Agreement State licenses, and commits the Commission and the State to cooperate to accord such reciprocity. The State's regulations provide for the reciprocal recognition of licenses from other jurisdictions.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Statute: N.J.S.A. 26:D2-9. State Regulations N.J.A.C. Title 7 Chapter 28.

28. **NRC and Department of Energy Contractors. The State should provide exemptions for NRC and DOE contractors which are substantially equivalent to the following exemptions:**
- a. **Prime contractors performing work for the DOE at U.S. Government-owned or controlled site;**
  - b. **Prime contractors performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;**
  - c. **Prime contractors using or operating nuclear reactors or other nuclear devices in a U.S. Government-owned vehicle or vessel; and**
  - d. **Any other prime contractor or subcontractor of DOE or NRC when the State and the NRC jointly determine (i) that, under the terms of the contract or subcontract, there is adequate assurance that the work there under can be accomplished without undue risk to the public health and safety; and (ii) that the exemption of such contractor or subcontractor is authorized by law.**

The NRC staff review verified that the State has adopted compatible regulations to NRC regulations in 10 CFR Parts 30, 40 and 70 including §30.12, §40.11, and §70.11 wherein the specified exemptions are contained. The NRC staff concludes that the State regulations do provide for exemptions from the State's requirements for licensing of sources of radiation for NRC and DOE contractors or subcontractors in accordance with the criterion.

The staff concludes that this criterion is satisfied.

References: Letter dated October 16, 2008, from Governor Corzine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization,

and additional related correspondence between the NRC and the State (ADAMS: ML090410192, ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, and ML090770116). State Regulations N.J.A.C. Title 7 Chapter 28.

#### STAFF CONCLUSION

The NRC staff has reviewed the proposed Agreement, the certification by the State in the application for an Agreement in letter dated October 16, 2008, from Governor Corzine to Chairman Klein, and the supporting information provided by the staff of the BER.

Section 274d. of the Act provides that the Commission shall enter into an Agreement under Section 274b. with any State if:

- (a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and
- (b) The Commission finds that the State program is in accordance with the requirements of Section 274o. and in all other respects compatible with the NRC's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The staff concludes that:

On the basis of this Assessment, the State of New Jersey meets the requirements of the Act. The **Agreement State Program State**, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the NRC and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: CHAIRMAN KLEIN  
SUBJECT: SECY-09-0065 – PROPOSED AGREEMENT BETWEEN  
THE STATE OF NEW JERSEY AND THE COMMISSION  
PURSUANT TO SECTION 274 OF THE ATOMIC  
ENERGY ACT OF 1954, AS AMENDED

Approved  X  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_ Attached  X  None \_\_\_



\_\_\_\_\_  
SIGNATURE

5/ 7 /2009

\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

**Chairman Klein's comments on SECY-09-0065, Proposed Agreement Between The State Of New Jersey And The Commission Pursuant To Section 274 Of The Atomic Energy Act Of 1954, As Amended**

I approve the Proposed Agreement Between the State of New Jersey and the Commission, and concur with the staff's plans to publish the proposed Agreement in the Federal Register for public comment, in parallel with the Commission's review of the staff's draft assessment, as we have done for the recent Agreements with Virginia and Pennsylvania.

I recognize the unique complexities associated with this Agreement as it relates to the timing of the waiver associated with the implementation of the Energy Policy Act of 2005 and regulation of naturally-occurring and accelerator-produced radioactive materials. I commend the staff for its efforts to develop a transition plan with the State to address this issue in order to disposition any public comments, which will be received when the Agreement is published in the Federal Register.

I further commend the NRC and State of New Jersey staffs for their diligent efforts to move this Agreement towards completion, and I look forward to New Jersey becoming the thirty-seventh Agreement State.

Attached is a listing of editorial comments on the Proposed Agreement.



5/7/2009

Dale E. Klein

Date

## **Editorial Comments**

### **Page Number, Comment**

#### **Enclosure 3, Draft Federal Register Notice**

Page 3, third full paragraph, last sentence, replace "the requirement" with "that requirement"

Page 3, section I. Background, second sentence delete, "as defined in Section 11z. of the Act"

Page 3, section I. Background, second sentence delete, "as defined in Section 11aa. of the Act"

Page 5, paragraph (c), last sentence, place a hyphen between the words "State" and "issued"

Page 7, 3<sup>rd</sup> and 4<sup>th</sup> lines, add the ADAMS accession number or the NRC public website address where FSME Procedure SA-700 can be found so that the document is easily retrievable by a member of the public.

#### **Enclosure 4, Draft Assessment**

Page 1, first paragraph, 8<sup>th</sup> line, place the period inside the quotation marks, Agreement."

In all OBJECTIVES containing the References paragraph, first sentence, place a closed parentheses before the period, i.e., "ML090770116)."

Page 9, Objective 16, 3<sup>rd</sup> full paragraph, second sentence, remove the extra space between the words "State" and "staff"

Page 9, Objective 18, 2<sup>nd</sup> full paragraph, first sentence, change "inspection report to the licensees, both" to "inspection reports to the applicable licensee, both"

Page 9, Objective 18, 2<sup>nd</sup> full paragraph, second sentence, revise to read: "The State's procedures identify the responsible staff and specify the time limits for preparing the inspection reports, the process for management reviews and approvals, and provide instructions for distribution of the reports to the licensees and to the State's official files."

Page 12, last full paragraph, third sentence, change "There is" to "There are"

Page 12, last full paragraph, second to last sentence, change "member that will spend 40%" to "member that will devote 40%"

Page 13, 5<sup>th</sup> full paragraph under b. Assessment of Staff Qualifications, move commas in the last portion of first sentence to read "and radiation science experience within NJDEP, as well as work in the private sector."

Page 13, 5<sup>th</sup> full paragraph under b. Assessment of Staff Qualifications, last sentence, change the sentence to read "The technical staff has completed or is scheduled to complete the NRC recommended core courses or have received waivers from BER based on prior training and experience, by the signature date of the Agreement."

Page 13, 6<sup>th</sup> full paragraph, remove the comma between the words "State" and "and"

Page 14, Objective 21, 2<sup>nd</sup> paragraph, first sentence, replace with the following "The NRC staff

review did not identify any aspects of the proposed Agreement State Program that could potentially interfere with duties imposed on a holder of materials by the NRC.”

Page 16, 2<sup>nd</sup> line, add a space between the words “duplicate” and “regulation”

Page 16, 1<sup>st</sup> full paragraph, change the last sentence to read “The staff determined that the State regulations specifically exclude any areas in which the jurisdiction of the NRC or another Federal agency is exclusive, and also give sufficient assurance against duplicate regulation between the State and the NRC in the regulation of Agreement Material.

Page 19, center the Title “Staff Conclusion” between the left and right margins

Page 19, last sentence, replace with the following “The Agreement State Program, as defined by the State statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the NRC and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-09-0065 – PROPOSED AGREEMENT BETWEEN  
THE STATE OF NEW JERSEY AND THE COMMISSION  
PURSUANT TO SECTION 274 OF THE ATOMIC  
ENERGY ACT OF 1954, AS AMENDED

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below XX Attached \_\_\_\_\_ None \_\_\_\_\_

Approved, subject to the edits of Commissioners Klein and Lyons and the additional edits attached.

  
\_\_\_\_\_  
SIGNATURE

05/14/2009  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes XX No \_\_\_\_\_



(h) Regulatory Administration. The State is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The State has also adopted administrative procedures to assure fair and impartial treatment of license applicants. State law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. State Statute contains a provision that provides for the recognition of existing NRC and Agreement State licenses. New Jersey has a process in place for the transition of active NRC licenses. Upon completion of the Agreement, all active NRC licenses issued to facilities in New Jersey will be recognized as NJDEP licenses. New Jersey will issue a brief licensing document that will include licensee specific information, as well as an expiration date, with a license condition that authorizes receipt, acquisition, possession, and transfer of byproduct, source, and/or special nuclear material; the authorized use(s); purposes; and the places of use as designated on the NRC license. The license condition will also commit the licensee to conduct its program in accordance with the NRC license and commitments. The NJDEP rules will govern unless the statements, representations and procedures in the licensee's application and correspondence are more restrictive than the rules. NJDEP will then issue full NJDEP licenses, over approximately 13 months.

The State also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. New Jersey regulations, in N.J.A.C. 28:51.1, provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits the State to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the

The NRC staff concludes that BER has an adequate number of staff to transition to and meet the anticipated needs of the Agreement State Program.

The staff concludes that criterion 20(a) is satisfied.

b. Assessment of Staff Qualifications

The NRC staff review considered the qualifications of the individuals currently on the BER staff that would be involved in the Agreement State Materials Program and the procedures for training and qualifying new staff members.

X Under the proposed Agreement, the BER will implement the Agreement State Program. The Bureau Chief of BER has a Bachelor of Arts degree in Biology and a Master of Science degree in Radiation Science. She has 28 years of experience, as a radiation physicist and in management, with NJDEP within a variety of program areas including radioactive materials, decommissioning/site remediation, radioanalytical laboratory program, and emergency response. X

The Supervisor of RMS will be responsible for the Program's administration and will provide the immediate day-to-day supervision of the Agreement State Materials Program. The Supervisor of RMS has a Bachelor of Science in Biology, a Master of Science in Radiation Science, and has a Nuclear Medicine Certification. He has about 25 years of experience in all aspects of the NJDEP programs – licensing and inspection of NARM licenses, radiation measurements, calibration, laboratory design, and emergency response. Additionally, he has experience as a nuclear medicine technologist, responsible for the preparation and use of radiopharmaceuticals for diagnostic and therapeutic purposes and the operation of clinical nuclear medicine instruments.

All other staff members have a Bachelor of Science degree in one of the following subject areas: environmental science, nuclear engineering, earth sciences, chemistry, physics, and biochemistry, with one person also possessing a Bachelor of Science degree in mathematics. Additionally, 5 staff members have a Master of Science in Radiation Science, one staff member has a Master of Business Administration, and another has begun graduate work in environmental policy studies.

The majority of the BER technical staff has extensive health physics and radiation science experience, within NJDEP as well as work in the private sector. Staff has work experience in nuclear engineering; as a radiation safety officer in medical and radiopharmaceutical facilities, environmental protection and remediation; and with radiopharmaceutical production. The technical staff has completed or is scheduled to complete the NRC recommended core courses; or have received waivers from BER based on prior training and experience.

The BER has had a strong NARM program for many years, regulating approximately 500 NARM licensees; consequently, the majority of staff currently with the program has extensive licensing and inspection experience. The BER technical staff has accompanied NRC staff on inspections of NRC licensees in the State, and is continuing to accompany NRC on more inspections in preparation for the transition to an Agreement State.