

## **ENCLOSURE 3**

### **NRC STAFF ASSESSMENT OF THE PENNSYLVANIA PROGRAM**

## **ASSESSMENT OF THE PROPOSED PENNSYLVANIA PROGRAM FOR THE REGULATION OF AGREEMENT MATERIALS AS DESCRIBED IN THE REQUEST FOR AN AGREEMENT**

This assessment examines the ability of the proposed Pennsylvania Agreement State program (the Pennsylvania program) to regulate the possession, use, and disposal of radioactive materials subject to the Atomic Energy Act of 1954 (the Act), as amended.<sup>1</sup> The U.S. Nuclear Regulatory Commission (NRC) performed this Assessment using the criteria in the Commission's policy statement entitled, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (hereafter referred to as the "criteria")<sup>2</sup> and the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700, "Processing an Agreement." The SA-700 procedure appears on the FSME Web site. 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 Pennsylvania program regulating radioactive materials would be located in the Pennsylvania Department of Environmental Protection (PADEP). PADEP is designated by law to be the State radiation control agency. Pennsylvania statute vests PADEP with the authority to issue, amend, inspect, suspend, or revoke licenses; place conditions; and issue orders or assess civil penalties.

PADEP is divided into six deputates, which are subdivided into bureaus. The Bureau of Radiation Protection (BRP), in the Deputate of Waste, Air, and Radiation Management, carries out the radiation control responsibilities. BRP is organized into four divisions—Decommissioning and Surveillance, Radiation Control, Nuclear Safety, and Radon. BRP provides radiological support to the emergency response plan for fixed nuclear facilities. The PADEP Bureau of Laboratories, with support of other agencies if needed, provides laboratory services. Pennsylvania also has six regional offices in the Deputate for Field Operations that are primarily responsible for inspection and compliance activities. All Agreement State regional activities will be conducted under programmatic policies established by the BRP Director.

Under the proposed Agreement, BRP would assume the regulatory responsibility for byproduct, source, and small quantities of special nuclear materials. The licensing of these materials will reside primarily in the BRP Division of Radiation Control (DRC) but the regional offices will also perform some licensing activities. Exceptions include the Low-Level Radioactive Waste Program, which is in the BRP Division of Nuclear Safety, and the decommissioning and environmental surveillance activities, which comprise a separate BRP division. The DRC currently regulates the possession and use of

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

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

naturally occurring and accelerator-produced radioactive materials (NARM), and the use of electronic machine radiation. Again, inspections will be performed primarily out of the PADEP regional offices.

The NRC staff verified that the Pennsylvania's Radiation Protection 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, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Sections 4.1.1 and Section 4.1.2 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML063330295, ML070290046, and ML070290041). Letter, with enclosures, dated March 16, 2007, from David Allard to Charles Miller, response to NRC comment letter dated January 26, 2007 (ADAMS Accession Nos. ML070790604, ML070790609, ML070790612, ML070790616, and ML070790620). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20).

## 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 Environmental Quality Board by Section 302 of the Pennsylvania Radiation Protection Act 1984-147, PADEP has the requisite authority to promulgate rules for protection against radiation.

The NRC staff verified that the Pennsylvania has adopted the relevant NRC regulations in Title 10 Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 70, 71, and 150, of the *Code of Federal Regulations* into Pennsylvania Code, Title 25, "Environmental Protection," by reference. Therefore, Pennsylvania has adopted an adequate and compatible set of radiation protection regulations that 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, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection."

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.**

Pennsylvania, 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 Pennsylvania adopted 10 CFR Part 20, "Standards for Protection against Radiation," of the NRC regulations by reference.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215 and 219.

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 verified that Pennsylvania has adopted the NRC regulations in 10 CFR Part 20, including Subpart C, "Occupational Dose Limits," and Subpart D, "Radiation Dose Limits to Individual Members of the Public," by reference. Pennsylvania 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, Pennsylvania licensees are required to consider the radiation dose whether the sources are in the possession of a licensee or not.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.10-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215 and 219.

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.**

The NRC staff verified that Pennsylvania has adopted Subpart F, "Surveys and Monitoring," of 10 CFR Part 20 by reference. Therefore, Pennsylvania 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, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215 and 219.

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 verified that Pennsylvania has adopted the regulations in Subpart J, "Precautionary Procedures," of 10 CFR Part 20 by reference. Therefore, the radiation labels, signs and symbols, as well as the posting and labeling requirements in the Pennsylvania rules, are identical to those contained in the NRC regulations.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215 and 219.

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 verified that Pennsylvania has adopted 10 CFR Part 19, "Notices, Instructions and Reports to Workers: Inspections and Investigations," by reference. Therefore, the Pennsylvania regulations pertaining to notices, instructions, and reports to workers are identical to the NRC regulations.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215 and 220.

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

The NRC staff verified that Pennsylvania has adopted Subpart I, "Storage and Control of Licensed Material," of 10 CFR Part 20 by reference. Therefore, the Pennsylvania regulations pertaining to security and control of licensed material are identical to the NRC regulations.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215 and 219.

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 Part 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 verified that Pennsylvania has adopted Subpart K, "Waste Disposal," of 10 CFR Part 20 by reference. Therefore, the Pennsylvania regulations pertaining to general requirements for waste disposal, including waste classification, transfer and waste manifests applicable to all licensees, are identical to the NRC regulations.

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 Pennsylvania has promulgated regulations pursuant to Pennsylvania Code, Title 25, "Environmental Protection," 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, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215, 219, and 236.

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 Pennsylvania has adopted the transportation requirements contained in 10 CFR Part 71, "Packaging and Transportation of Radioactive Material," by reference. Because NRC renumbered 10 CFR Part 71, a few minor changes are needed in the Pennsylvania Code, Title 25, Chapter 215. Pennsylvania has published these changes for public comment and is proceeding through the regulatory process to gain approval by the Pennsylvania Environmental Quality Board in the December 2007 timeframe. Therefore, the Pennsylvania regulations pertaining to the transportation requirements in 10 CFR Part 71 will be fully compatible with the NRC regulations in Title 10 of the *Code of Federal Regulations* before the effective date of the Agreement. Pennsylvania's regulations specifically exempt areas of exclusive NRC jurisdiction.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215 and 230.

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 verified that Pennsylvania has adopted 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 70, 71, and 150 by reference. The NRC staff also verified that Pennsylvania adopted the relevant NRC regulations in 10 CFR Part 61 into Title 25 of the Pennsylvania Code. The records and reports referenced in criterion 11 are regulatory requirements in these parts. Therefore, Pennsylvania has adopted the necessary record and reporting requirements.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection."

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 verified that Pennsylvania has adopted 10 CFR 30.34, "Terms and Conditions of Licenses," by reference. Therefore, Pennsylvania regulations provide the radiation control agency with the authority to impose, by order or license condition, additional health and safety requirements beyond the requirements specified in law and the rules. The agency also has the legal authority to grant reasonable and necessary exceptions to the regulatory requirements, either by order or license condition.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapter 215.

#### 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 the 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.

Pennsylvania has adopted, by reference, the NRC regulations containing the regulatory requirements for applying for and issuing licenses by reference.

The NRC staff verified that the Pennsylvania regulations provide that only the 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 NRC will retain the regulatory authority to conduct safety evaluations of sealed sources and devices, unless the State requests assumption of the authority and has in place an adequate and compatible program to implement such authority. Pennsylvania has decided not to seek authority for evaluation of sealed sources and devices.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215 and 217.

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 determined that Pennsylvania has committed to use the NRC licensing guidance in the NUREG-1556 series, "Consolidated Guidance about Materials Licenses," to perform technical evaluation of the proposed uses of radioactive material. In addition, Pennsylvania has developed administrative licensing procedures that define the review process for a license application, renewal, amendment, and license

termination.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.3 (ADAMS Accession Nos. ML063330295 and ML070260179). Letter, with enclosures, dated March 16, 2007, from David Allard to Charles Miller, response to NRC comment letter dated January 26, 2007 (ADAMS Accession Nos. ML070790604, ML070790609, ML070790612, ML070790616, and ML070790620).

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 Pennsylvania has adopted 10 CFR Part 35, "Medical Use of Byproduct Material," by reference. Therefore, the Pennsylvania regulations, which include training and experience requirements for the use of radioactive materials on or in humans, are identical to the NRC requirements.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215 and 224.

## 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 determined that the Pennsylvania program has statutory authority to conduct inspections of licensees. The NRC staff also verified that Pennsylvania has adopted regulation, by reference, which are compatible with the equivalent parts of Title 10 of the *Code of Federal Regulations*, that contain provisions relating to inspections and tests.

The NRC staff determined that Pennsylvania has adopted a schedule for inspection of licensees at least as frequent as the schedule used by the NRC. The program 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 the NRC's procedures.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Sections 4.1, 4.2, and 4.4 (ADAMS Accession Nos. ML063330295, ML070290041, ML070290046, ML070260116, and ML070260179). Letter, with enclosures, dated March 16, 2007, from David Allard to Charles Miller, response to NRC comment letter dated January 26, 2007 (ADAMS Accession Nos. ML070790604, ML070790609, ML070790612, ML070790616, and ML070790620). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215 and 220.

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

The NRC staff determined that Pennsylvania 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. BRP may obtain a search warrant upon a showing of probable cause.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Sections 4.1 and 4.4 (ADAMS Accession Nos. ML063330295, ML070290041, ML070290046, and ML070260179). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapter 215.

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 determined that Pennsylvania 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 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, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.4 (ADAMS Accession Nos. ML063330295 and ML070260179).

## 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 determined that the Pennsylvania program is authorized by law to enforce State rules using a variety of sanctions, including the imposition and collection of civil penalties and the issuance of orders to suspend, modify, or revoke licenses, or impound materials. The program may also present for prosecution charges of summary, misdemeanor, or felony criminal violation, as appropriate. The program is authorized to file liens for failure to pay a civil penalty.

The NRC staff also determined that the program has adopted policies and procedures to implement the enforcement authority. The Pennsylvania 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, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.5 (ADAMS Accession Nos. ML063330295 and ML070260026).

## 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 2 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, 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.**

The NRC staff reviewed the organizational charts, position descriptions, training and qualification plan, and the curricula vitae for the current staff members of the Pennsylvania program, as presented with the request for an Agreement. The NRC staff findings and conclusions are presented below.

**a. Assessment of the Agreement Materials Staffing**

The staff of the Radioactive Materials Licensing Section, DRC, in the Headquarters BRP will be primarily responsible for the licensing activities of the Agreement Materials Program. The Radiation Protection Program staff working out of the PADEP regional offices will also support licensing activities. In addition, Radiation Protection Program staff working out of the PADEP regional offices will primarily be responsible for

conducting the inspection and compliance functions.

The Pennsylvania staffing needs analysis indicates that the Agreement materials program will need a total of approximately 13.5 full-time equivalent (FTE) staff. The BRP staffing plan shows that 16.8 FTE are available, which is reasonably matched to the workload for materials licensing and inspection and decommissioning activities. The staffing plan shows that none of the BRP Director's time is directly committed to Agreement materials program licensing or inspection activities. However, given the scope of the State's Radiation Control Program and the Director's experience and credentials, the Director has indicated to the review team that he expects to provide ample technical consultation and administrative support for the materials and decommissioning portion of the program. Four staff members will provide 100 percent of their time to Agreement State program activities, and 15 other staff members will provide 50 percent or more of their time to these activities. Three other staff members will commit less than 50 percent of their time. Pennsylvania's staff assessment allows time for radiological response, instructional opportunities, and training. The technical staffing analysis does not address administrative and secretarial support, however, the program narrative notes that clerical support is available in the central and all regional offices; other organizational units within PADEP will provide administrative support, such as fiscal, information technology, and legal.

There are approximately 690 NRC-specific licenses in Pennsylvania. The BRP also licenses approximately 460 NARM users. A number of facilities have both NRC and NARM licenses. BRP estimates that once these licenses are combined when the Agreement becomes effective, a net of approximately 1000 radioactive materials licenses will be in effect. Based on the BRP staffing allocation of 16.8 technical/professional FTE devoted to the Agreement State program, the team's evaluation of the Pennsylvania's staffing analysis concludes that BRP has adequate staffing. In addition, the staff expects that a substantial portion of the Pennsylvania NARM registrants are also NRC licensees. Pennsylvania plans to combine these duplicate licenses under the Agreement, a common practice for new Agreement States. The NRC staff concludes that the estimate of 1000 licensees is reasonable, and the projected 16.8 technical/professional FTE will provide an adequate level of staffing to satisfactorily handle anticipated licensing, inspection, reciprocity, allegations, and incident response workload.

The staff concludes that the proposed Pennsylvania Agreement materials program has an adequate number of staff to meet anticipated program needs.

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 BRP professional/technical staff who would be involved in the Agreement materials program, as well as the procedures for training and qualifying new staff members. Under the proposed Agreement, the BRP Director would be primarily responsible for the program's overall administration. He holds a masters degree in radiological sciences and protection, and he is certified by the American Board of Health Physics and has over 25 years of experience in health physics and supervision. He has 8 years of experience with the BRP as its director.

Program managers within the DRC and the regional offices will provide the immediate day-to-day supervision of the licensing, inspection, and decommissioning programs. The NRC staff review found that the two of the six managers have bachelors degrees in sciences or engineering. The other four hold masters degrees. The managers have at least 7 years experience with BRP, and most have been with BRP for 20 or more years. In addition to their regulatory program experience, several of the managers have experience in industry.

The NRC staff reviewed the educational qualifications of 20 individuals who would be involved in licensing and inspections of the Agreement materials. Except for two individuals, all have at least a bachelors degree in science or engineering. Fields of study include physics, biology, zoology, radiation science, radiation technology, environmental science, environmental engineering, and general science. One of the exceptions was trained as a radiological technologist and has extensive industry and regulatory experience, including 15 years service in BRP. The other holds a bachelors degree in educational science and has 21 years experience in BRP. The NRC staff considers that these combinations of training and experience to meet the requirements of being equivalent to a bachelor degree. The FTE assignments of these 20 individuals totals to more than the 13.5 FTE projected to be necessary by the Pennsylvania staff needs analysis.

The BRP technical staff members have extensive applicable experience. This includes experience in health physics, nuclear power, medical, industry, military, and State regulatory agencies. Most technical staff members have completed the NRC-recommended core courses or have met the requirements based on their training and prior experience. The program continues to send BRP staff to training courses to either complete core course requirements or obtain specialized or refresher training.

Pennsylvania has developed qualification procedures for license reviewers and inspectors which are similar to the NRC's procedures. The BRP technical staff are working with NRC license reviewers in NRC Region I Office and accompanying NRC staff on inspections of NRC licensees in Pennsylvania. Pennsylvania staff members are also actively supplementing their experience through direct meetings, discussions, and facility walkdowns with NRC licensees in Pennsylvania and through self-study, in-house training, and formal training.

Pennsylvania has an adequate number of trained and qualified staff in place, based on the staff needs analysis and qualification procedures.

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

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.6 (ADAMS Accession Nos. ML063330295 and ML070260026). Letter, with enclosures, dated March 16, 2007, from David Allard to Charles Miller, response to NRC comment letter dated January 26, 2007, Letter with enclosures, dated November 1, 2007, from David Allard to Janet Schlueter, response to NRC letter dated August 16, 2007 (ADAMS Accession Nos. ML070790604, ML070790609, ML070790612, ML070790616, ML070790620, ML072320016, and ML073120087).

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

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.1 (ADAMS Accession Nos. ML063330295, ML070290041, and ML070290046). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapter 215.

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:**

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

The NRC staff verified that Pennsylvania has adopted, by reference, the agency's definition of special nuclear material in critical mass quantities by reference.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.1 (ADAMS Accession Nos. ML063330295, ML070290041, and ML070290046). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215 and 217.



## 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 determined that general statutory provisions bind PADEP to provide 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 allegations, and administrative and judicial requirements for requesting and holding hearings on enforcement matters.

The staff concludes that this criterion is satisfied

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Sections 4.1, 4.3, and 4.5 (ADAMS Accession Nos. ML063330295, ML070290041, ML070290046, ML070260179, and ML070260026). Letter, with enclosures, dated March 16, 2007, from David Allard to Charles Miller, response to NRC comment letter dated January 26, 2007 (ADAMS Accession Nos. ML070790604, ML070790609, ML070790612, ML070790616, and ML070790620). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20).

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 duplicate regulation 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 PADEP has been designated by statute as the lead agency for carrying out Pennsylvania's Radiation Protection Program and has been provided by statute with the requisite legal authority to do so. In addition, to the extent that this criterion deals with duplicate regulation between a State and the NRC (see FSME Procedure SA-700 Handbook, Evaluation Criterion 4.1.1.2., paragraph b, and Evaluation Criterion 4.2.2.2), the NRC staff determined that the Pennsylvania program, which specifically excludes from State regulation any areas in which the jurisdiction of the NRC or another Federal agency is exclusive, gives sufficient assurance against duplicate regulation between Pennsylvania and the NRC in the regulation of agreement material.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.1 (ADAMS Accession Nos.

ML063330295, ML070290041, and ML070290046). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20).

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 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 determined that Pennsylvania Code, Title 25, "Environmental Protection," Chapter 217 (25 PA Code 217.133) contains a provision that deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license under the Pennsylvania Code. The license will expire either 90 days after receipt from PADEP of a notice of expiration of the license or on the date of expiration specified in the NRC license, whichever is earlier.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.1 (ADAMS Accession Nos. ML063330295, ML070290041, and ML070290046). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215 and 217.

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 verified that the proposed Agreement commits Pennsylvania to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against the hazards of radiation and to ensure that the Pennsylvania program will continue to be compatible with the NRC's program for the regulation of materials covered by the Agreement.

In a revised policy statement on the adequacy and compatibility of Agreement State programs (published September 3, 1997, at 62 FR 46517), the Commission determined that providing reports to the NRC of Agreement State licensee incidents, accidents, and other significant events is a matter of compatibility. The NRC staff determined that Pennsylvania has adopted procedures to provide such reports to the agency.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, and Sections 4.1 and 4.7 (ADAMS Accession Nos. ML063330295, ML070290041, ML070290046, and ML070260026). Letter, with enclosures, dated March 16, 2007, from David Allard to Charles Miller, response to NRC comment letter dated January 26, 2007 (ADAMS Accession Nos. ML070790604, ML070790609, ML070790612, ML070790616, and ML070790620).

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. **Source material,**
  - d. **Special nuclear material in quantities not sufficient to form a critical mass,**
  - e. **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 verified that the proposed Agreement provides for the Commission to discontinue, and the Commonwealth of Pennsylvania to assume, regulatory authority over the types of material defined in categories a, c, d, and e above.

As provided for within the Energy Policy Act of 2005, an Agreement State may assume the authority to regulate byproduct materials as defined in Section 11e.(3) of the Act and byproduct materials as defined in Section 11e.(4) of the Act. Pennsylvania has requested to assume regulatory authority over these types of byproduct material. The NRC staff verified that the proposed Agreement provides for the Commission to discontinue, and the Commonwealth of Pennsylvania to assume, regulatory authority over the types of byproduct material defined in Sections 11e.(3) and 11e.(4) of the Act.

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. Pennsylvania has chosen not to assume this authority.

The proposed Agreement stipulates the desirability or reciprocal recognition of NRC and other Agreement State licenses and commits the Commission and the Commonwealth to cooperate to accord such reciprocity. Pennsylvania's regulation provides for the

reciprocal recognition of licenses from other jurisdictions.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.1 (ADAMS Accession Nos. ML063330295, ML070290041, and ML070290046). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapters 215 and 217.

**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 thereunder 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 verified that Pennsylvania has specifically listed these exceptions in Pennsylvania Code Title 25, Chapter 215 ( 25 PA Code 215.32), and therefore provides the necessary exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors, in accordance with the criterion.

The staff concludes that this criterion is satisfied.

References: Letter, with attachments, dated November 9, 2006, from Governor Rendell to Chairman Klein, request for an Agreement, Section 4.2 (ADAMS Accession Nos. ML063330295 and ML070260116). Pennsylvania Statutes: Radiation Protection Act (35 P.S. §§ 7110.101-7110.703), Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101-7130.906), and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20). Pennsylvania regulations: Pennsylvania Code, Title 25, "Environmental Protection," Chapter 215.

#### STAFF CONCLUSION

The NRC staff has reviewed the proposed Agreement, the certification by Pennsylvania in the application for an Agreement in a letter dated November 9, 2006, from Governor Rendell to

Chairman Klein, and the supporting information provided by the PADEP BRP staff.

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

- (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 NRC staff has reviewed the proposed Agreement, the certification by the Commonwealth of Pennsylvania in the application for an Agreement submitted by Governor Rendell on November 9, 2006, and the supporting information provided by the PADEP BRP staff and concludes that the Commonwealth of Pennsylvania satisfies the criteria in the Commission's policy statement entitled, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement." Therefore, the Commonwealth of Pennsylvania meets the requirements of Section 274 of the Act. The proposed Pennsylvania program to regulate agreement materials, which includes statutes, regulations, and procedures, is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.