

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, D.C. 20555

October 16, 1991

NRC INFORMATION NOTICE 91-65: EMERGENCY ACCESS TO LOW-LEVEL RADIOACTIVE
WASTE DISPOSAL FACILITIES

Addressees

All NRC licensees.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this information notice to licensees who generate or who may potentially generate low-level radioactive waste (LLW) for shipment to LLW disposal facilities. This notification is intended to inform licensees of the strict requirements governing implementation of the emergency access provision of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA), and to discourage any consideration of reliance on emergency access as a means of LLW disposal. This notification does not constitute a complete review of the rules, regulations, and statutes referenced herein, and should not be considered a substitute for these requirements. No specific action or written response is required.

Description of Circumstances

The LLRWPA established a series of milestones, penalties, and incentives for States or regional compacts to progress toward development of disposal capacity by 1993. The Act contains an emergency access provision (Section 6) by which, "Any generator of low-level radioactive waste, or any Governor ... may request that the Nuclear Regulatory Commission grant emergency access to a regional disposal facility ... for specific low-level radioactive waste." As a precondition to requesting an emergency access determination from NRC, a LLW generator or governor must be denied access to all existing LLW disposal facilities.

Congressional concern that a serious and immediate threat to the public health and safety could result from denial of access to a LLW disposal facility led to inclusion of the emergency access provision in the LLRWPA. On February 3, 1989, NRC published an emergency access rule (10 CFR Part 62) that defines the criteria and procedures used for emergency access to non-Federal and regional LLW disposal facilities. As the Commission stated in issuing its regulations governing emergency access decisions, Congress did not intend that Section 6 of the LLRWPA be an alternative to the pursuit of the development of new low-level waste disposal capacity. The Commission remains strongly opposed to implementation of the emergency access provisions as an alternative for those States not meeting the milestones in the LLRWPA and, accordingly, has no intent to implement these provisions to address such situations. Emergency

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access is to be used only under very limited and rare circumstances. Instances where such action is necessary to eliminate a serious and immediate threat to the public health and safety or the common defense and security and where there are no other mitigating alternatives available to emergency access, would be unlikely. The emergency access provision provides a mechanism for federal involvement only as a vehicle of last resort. The rule sets strict requirements for granting emergency access, and places the burden on the party requesting emergency access, to demonstrate that the criteria in the rule have been met and that emergency access is needed.

Denial of LLW disposal access for generators from the State of Michigan by the three sited States with existing LLW disposal facilities on November 10, 1990, focused attention on the emergency access provision. Recent questions about the licensing and operation of new LLW disposal facilities in California and Nebraska have also raised concern about possible requests for, and implementation of, emergency access determinations by NRC.

Discussion

An emergency access determination can be made only by NRC. Information that NRC requires to reach a determination is to be provided by the LLW generator, or governor, who has been denied access to all LLW disposal facilities. Information to be submitted would include the need for access to LLW disposal sites, the quantity and type of material requiring disposal, impacts on health and safety or common defense and security if emergency access were not granted, and consideration of available alternatives to emergency access. The Commission will decide whether the requestor has considered all factors in the evaluation of alternatives and the impacts of these alternatives on public health and safety.

The requestor will be expected to: (1) demonstrate that all pertinent alternatives have been considered; (2) provide a detailed analysis comparing each of the alternatives considered; (3) demonstrate that consideration has been given to combining alternatives in some way or in some sequence either to avoid the need for emergency access, or to resolve the threat, even on a temporary basis, until other arrangements can be made; (4) evaluate the societal costs, technical and economic feasibility and benefits to the public health and safety of the potential alternatives; and (5) incorporate the results into the request.

Applicants for emergency access will have to provide clear and convincing evidence that they have exhausted all other options for managing their LLW.

Alternatives which, at a minimum, a requestor must evaluate include:
(1) storage of LLW at the site of generation or at a storage facility;
(2) obtaining access to a disposal facility by voluntary agreement;
(3) purchasing disposal capacity available for assignment pursuant to Section 5(c)(4) of the LLRWPA; and (4) ceasing activities that generate LLW.

NRC staff has provided the following guidance to waste generators on how to manage the accumulation of waste in the event of denial of access to waste disposal facilities:

1. Information Notice No. 90-09: Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees.
2. Information Notice No. 89-13: Alternative Waste Management Procedures in Case of Denial of Access to Low-Level Waste Disposal Sites.¹
3. Generic Letter 85-14: Commercial Storage at Power Reactors of Low-Level Radioactive Waste Not Generated by the Utility.
4. Generic Letter 81-38: Storage of Low-Level Radioactive Waste at Power Reactors.

Upon receipt of a request for emergency access, NRC will publish a notice in the Federal Register informing the public that Commission action on the request is pending and coordination with potentially involved or impacted States would begin. The LLRWPA limits NRC to 45 days from the time a request is received to determine whether emergency access will be granted. Information submitted by the requestor will enable the Commission to determine:

- (a) whether a serious and immediate threat to the public health and safety or the common defense and security might exist;
- (b) whether alternatives exist that could mitigate the threat; and
- (c) which non-Federal disposal facility or facilities should provide the required disposal capacity.

If NRC determines that an alternative exists that ensures the public health and safety, does not jeopardize the common defense and security, and is technically and economically feasible, the request for emergency access will be denied. Only if all alternatives prove to be unreasonable can NRC grant access.

If emergency access is granted, the Commission will select a disposal facility to receive the LLW based on waste characteristics and disposal site compatibility, capacity limits determined by the LLRWPA, licensing criteria, and other related considerations. The disposal facility determination would be coordinated with appropriate State authorities. A LLW disposal facility will be selected to receive only those classes of waste that it normally handles and disposes of pursuant to its license under non-emergency access operating conditions. In addition, emergency access is limited in time and amount. It cannot exceed 180 days, with the possibility of one 180-day extension. If the serious threat ceases, access can be terminated sooner. Further, in deciding

¹This information notice specifically addresses this concern and outlines actions such as making license amendments to increase possession limits, using volume reduction techniques, and using alternative management and disposal techniques.

which site to designate to receive the emergency access waste, the Commission would exclude a disposal facility if the volume of emergency access waste received by the facility exceeds 20 percent of the total volume of LLW accepted for disposal during the previous calendar year.

The Commission does not anticipate any situation where the lack of access would create a serious and immediate threat to the public health and safety. Furthermore, it was the intent of Congress that the emergency access provision neither be used to circumvent other provisions of the Act nor be viewed by unsited States as an alternative to the development of new LLW disposal capacity. The emergency access rule sets a very high threshold for granting emergency access and should serve to encourage potential requestors to seek other means for resolving difficulties created by denial of access to LLW disposal facilities. It is difficult to envision, for example, any set of circumstances under which a nuclear power plant could justify a request for emergency access.

Licensees are encouraged to monitor the status of current siting and disposal developments in their low-level radioactive waste compacts or States to better foresee potential LLW management difficulties. Licensees in States for which it appears milestones of the LLRWPA will not be met should prepare for the possibility of restrictions on disposal of radioactive waste.

Questions about emergency access should be addressed to:

Paul Lohaus, Chief, Low-Level Waste Management Branch, Division of
Low-Level Waste Management and Decommissioning, 301 492-0553.

This information notice requires no specific action or written response. If you have any questions about the information in this notice, please contact the technical contact listed below.

Richard L. Bangart
Richard L. Bangart, Director
Division of Low-Level Waste Management
and Decommissioning
Office of Nuclear Material Safety
and Safeguards

Technical contact: Richard H. Turtill, NMSS
301 492-3447

Attachments:

1. List of Recently Issued NMSS Information Notices
2. List of Recently Issued NRC Information Notices

LIST OF RECENTLY ISSUED
NMSS INFORMATION NOTICES

Information Notice No.	Subject	Date of Issuance	Issued to
91-60	False Alarms of Alarm Ratemeters Because of Radiofrequency Interference	09/24/91	All Nuclear Regulatory Commission (NRC) licensees authorized to use sealed sources for industrial radiography)
91-49	Enforcement of Safety Requirements for Radiographers	08/15/91	All Nuclear Regulatory Commission (NRC) licensees authorized to use sealed sources for industrial radiography.
91-44	Improper Control of Chemicals in Nuclear Fuel Fabrication	07/07/91	All nuclear fuel facilities.
91-39	Compliance with 10 CFR Part 21, "Reporting of Defects and Noncompliance"	06/17/91	All Nuclear Regulatory Commission (NRC) material licensees.
91-35	Labeling Requirements for Transporting Multi-Hazard Radioactive Materials	06/07/91	All Nuclear Regulatory Commission (NRC) licensees.
91-30	Inadequate Calibration of Thermoluminescent Dosimeters Utilized to Monitor Extremity Dose at Uranium Processing and Fabrication Facilities	04/23/91	All fuel cycle licensees routinely handling unshielded uranium materials.
91-26	Potential Nonconservative Errors in the Working Format Hansen-Roach Cross-Section Set Provided with The Keno and Scale Codes	04/02/91	All fuel cycle licensees and other licensees, including all holders of operating licenses for nuclear power reactors, who use physics codes to support criticality safety in the use of fissile material.

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Information Notice No.	Subject	Date of Issuance	Issued to
91-64	Site Area Emergency Resulting From a Loss of Non-Class 1E Uninterruptible Power Supplies	10/09/91	All holders of OLs or CPs for nuclear power reactors.
91-63	Natural Gas Hazards at Fort St. Vrain Nuclear Generating Station	10/03/91	All holders of OLs or CPs for nuclear power reactors.
91-62	Diesel Engine Damage Caused by Hydraulic Lockup Resulting from Fluid Leakage Into Cylinders	09/30/91	All holders of OLs or CPs for nuclear power reactors.
91-61	Preliminary Results of Validation Testing of Motor-Operated Valve Diagnostic Equipment	09/30/91	All holders of OLs or CPs for nuclear power reactors and motor-operated valve (MOV) diagnostic equipment vendors identified herein.
91-60	False Alarms of Alarm Ratemeters Because of Radiofrequency Interference	09/24/91	All Nuclear Regulatory Commission (NRC) licensees authorized to use sealed sources for industrial radiography.
91-59	Problems with Access Authorization Programs	09/23/91	All holders of OLs or CPs for nuclear power reactors.
91-58	Dependency of Offset Disc Butterfly Valve's Operation on Orientation with Respect to Flow	09/20/91	All holders of OLs or CPs for nuclear power reactors.
91-57	Operational Experience on Bus Transfers	09/19/91	All holders of OLs or CPs for nuclear power reactors.

OL = Operating License
CP = Construction Permit

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* See Previous Concurrence :EKraus :FCongel
:10/02/91 : / /91

OFC :LLWB* :LLWB* :LLWB* :NMSS* :SP* :OGC* :LLWM* :LLWM*
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JSurmeier	PLohaus	JKennedy	RTurtill	FCongel	RSmith
PDR YES	RCunningham	CKammerer	JHickey		LLWB r/f
PDR NO	Category: Proprietary	or	CF Only		
ACNW YES	NO		:TEdit	:NRR	
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	* See Previous Concurrence		: 10/4/91	: 10/10/91	

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