

EDO Principal Correspondence Control

FROM: Toni Hardesty  
State of Idaho

DUE: 03/07/05

EDO CONTROL: G20050127  
DOC DT: 02/07/05  
FINAL REPLY:

Toni Hardesty  
State of Idaho

TO:

Chairman Diaz

FOR SIGNATURE OF :

\*\* PRI \*\*

CRC NO: 05-0091

Chairman Diaz

DESC:

ROUTING:

Resource Conservation and Recovery Act Subtitle C  
and Other Classes of Disposal Facilities for Low-  
Activity Radioactive Waste and Solid Waste from  
NRC-Licensed Facilities

Reyes  
Virgilio  
Kane  
Merschhoff  
Silber  
Dean  
Burns/Cyr  
Lohaus, STP

DATE: 02/23/05

ASSIGNED TO:

CONTACT:

NMSS

Strosnider

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate response with STP.

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

Date Printed: Feb 23, 2005 13:52

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**PAPER NUMBER:** LTR-05-0091 **LOGGING DATE:** 02/23/2005  
**ACTION OFFICE:** EDO  
**AUTHOR:** Toni Hardesty  
**AFFILIATION:** ID  
**ADDRESSEE:** Nils Diaz  
**SUBJECT:** Use of RCRA Subtitle C and other classes of disposal facilities for low-activity radioactive waste and solid waste from NRC-licensed facilities  
**ACTION:** Signature of Chairman  
**DISTRIBUTION:** RF, SECY to Ack  
**LETTER DATE:** 02/07/2005  
**ACKNOWLEDGED:** No  
**SPECIAL HANDLING:** Made publicly available in ADAMS via SECY/EDO/DPC  
**NOTES:** Commission Correspondence  
**FILE LOCATION:** ADAMS  
**DATE DUE:** 03/09/2005 **DATE SIGNED:**

EDO --G20050127



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706-1255 • (208) 373-0502

Dirk Kempthorne, Governor  
Toni Hardesty, Director

February 7, 2005

The Honorable Nils J. Diaz  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Chairman Diaz:

NRC licensee Connecticut Yankee recently submitted a proposal to NRC for authorization for alternate disposal of reactor decommissioning waste at US Ecology Idaho's (USEI) facility near Grand View, Idaho. USEI's facility has a Resource Conservation and Recovery Act Subtitle C permit from the State of Idaho for disposal of hazardous waste, but is not licensed by NRC for disposal of radioactive waste.

NRC and IDEQ agree that only Atomic Energy Act materials exempted from NRC regulation are eligible for disposal at USEI. (See letter dated December 16, 2004, from Paul Lohaus, Director of NRC's Office of State and Tribal Programs to IDEQ). IDEQ regulates the extent to which NRC-exempted waste may be disposed at USEI.

I have enclosed a copy of our comments on NRC's draft Environmental Assessment for the alternate disposal authorization under 10 CFR 20.2002. IDEQ's comments on the EA do not prejudice IDEQ's regulatory decisions as to the appropriateness and applicable conditions for disposal at USEI of any Connecticut Yankee decommissioning waste the NRC may exempt.

I write to the Commission under separate cover because of the lack of clarity as to what extent NRC is integrating its consideration of such specific requests with its national policymaking. NRC and USEPA are currently considering the appropriateness and potential criteria for use of RCRA Subtitle C and other classes of disposal facilities for low-activity radioactive waste and solid waste from NRC-licensed facilities.

IDEQ wants to avoid conflict between decisions NRC and IDEQ may make in the specific Connecticut Yankee case with upcoming national policy decisions.

USEPA issued an Advanced Notice of Proposed Rulemaking on low-activity radioactive waste in November 2003 (68 Federal Register 65120). The Notice identified a desire to evaluate integrated regulation of this waste on a national basis, including the potential use of RCRA Subtitle C disposal facilities for waste streams such as decommissioning waste.

USEPA's Notice attracted considerable interest and prompted comments from the public, legislators, and agencies from several states, including IDEQ. We understand USEPA is coordinating with NRC in its evaluation of the issue and has not decided whether to proceed with rulemaking.

In a separate rulemaking, NRC staff currently have a deadline of March 31, 2005 for submitting to the Commission a proposed final clearance rule regarding alternatives for controlling the disposition of solid materials from NRC-licensed facilities containing no or very small amounts of radioactivity. (See 68 FR 9595, February 28, 2003, regarding enhanced participatory rulemaking).

Given this context, IDEQ would appreciate NRC's response to the following questions:

- When does NRC expect to promulgate a final clearance rule for disposition of solid materials from NRC-licensed facilities?
- Will NRC continue processing requests for 10 CFR 20.2002 alternate disposal authorizations and specific exemptions for decommissioning waste pending promulgation of the final clearance rule? If so, how does NRC expect the criteria used for these specific decisions to relate to standards in the clearance rule?
- How does NRC expect evaluations of specific alternate disposal authorizations and exemptions to relate to EPA's consideration of the use of subtitle C facilities for disposal of low-activity radioactive waste on a national basis?

I appreciate your attention to this matter and look forward to your reply.

Sincerely,



Toni Hardesty  
Director

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Enclosure

c: Rick Poeten, EPA Region 10



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ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706-1255 • (208) 373-0502

Dirk Kempthorne, Governor  
Toni Hardesty, Director

February 7, 2005

Theodore B. Smith  
Decommissioning Directorate  
Division of Waste Management and Environmental Protection  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

**Re: Comments on the draft Environmental Assessment for Exemption of Material in Accordance with 10 CFR 20.2002 for Proposed Disposal Procedures for the Connecticut Yankee Atomic Power Company (Docket Number 50-213)**

Dear Mr. Smith:

The Idaho Department of Environmental Quality (IDEQ) provides the following comments on NRC's above-referenced Environmental Assessment (EA).

**Requirements for IDEQ Approval and NRC Waste Exemption**

The EA's proposed action is the shipment of approximately 50,000 tons of decommissioning waste from the Connecticut Yankee reactor for disposal at US Ecology's (USEI) RCRA Subtitle C disposal facility near Grand View, Idaho.

The EA should clarify that disposal at USEI of radioactive waste exempted from NRC regulation is regulated by IDEQ, and that USEI could not dispose of any NRC-exempted Connecticut Yankee waste without IDEQ's separate approval. IDEQ regulates the disposal of radioactive waste exempted from NRC regulation under IDAPA 58.01.10, Rules Regulating the Disposal of Radioactive Materials not Regulated under the Atomic Energy Act of 1954, as Amended (attached). Disposal would also have to comply with the conditions of USEI's Subtitle C permit.

NRC and IDEQ agree that only Atomic Energy Act materials exempted from NRC regulation are eligible for disposal at USEI. (See letter dated December 16, 2004, from Paul Lohaus, Director of NRC's Office of State and Tribal Programs to IDEQ.) NRC's evaluation of whether to exempt from its regulation all or some of the proposed Connecticut Yankee waste is therefore a connected action to its authorization of alternate disposal. The EA should identify what exemption(s) NRC proposes to apply to Connecticut Yankee decommissioning waste, as well as the criteria for the exemption and when and where the exemption would take effect.

**Transuranic Regulation**

The Connecticut Yankee decommissioning waste is projected to contain transuranic elements only in fairly small concentrations. NRC does not currently have a general exemption for quantities or concentrations of transuranic elements other than in consumer products (see 10 CFR 30.15). NRC should clarify how the proposed action relates to its regulation of transuranic elements in waste from NRC-licensed facilities.

**Current Permit Requirements at USEI**

The EA should clarify to what extent NRC's alternate disposal evaluation relies on USEI's current performance assessment, waste acceptance criteria and verification, health and safety plan, post-closure requirements, radiation monitoring, and waste handling procedures.

NRC should be aware that the specific radionuclide aspects of USEI's Subtitle C permit are currently based on TENORM/NORM radionuclides (e.g., uranium, thorium and decay products), not reactor-produced radionuclides (e.g., strontium, cesium, technetium, and transuranics). Radioactive waste streams disposed at USEI to date have primarily involved TENORM/NORM waste, with a limited amount of generally exempt quantities of source and byproduct material.

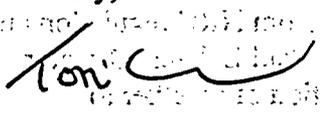
Current USEI Waste Acceptance Criteria (WAC) do not include concentration limits for reactor-produced radionuclides, and radiation-monitoring program is limited to TENORM/NORM radionuclides. Should NRC determine Connecticut Yankee decommissioning waste is exempt from its regulation, IDEQ would have to assess the cumulative effects of the additional waste and what regulatory and permitting changes may apply to this specific waste stream.

The EA's proposed action involves two regulatory relationships, NRC's relationship with licensee Connecticut Yankee, and IDEQ's relationship with permittee USEI. IDEQ is willing to meet with NRC and/or its licensee and USEI if that would be helpful to reduce confusion that might otherwise occur in our respective evaluations and communications with the regulated entities.

I have also enclosed a letter from IDEQ to NRC Chairman Nils Diaz regarding the relationship of NRC's analysis of specific decommissioning waste proposals to national policy making.

Please contact Doug Walker, Idaho's NRC liaison, at 208-528-2600 if NRC needs additional information or wishes to discuss these comments.

Sincerely,



**Toni Hardesty**  
**Director**

Enclosures (2)

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