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

JUL 27 1994

MEMORANDUM FOR: Charles W. Hehl, Director, DRSS, RI
J. Philip Stohr, Director, DRSS, RII
William L. Axelson, Director, DRSS, RIII
Samuel J. Collins, Director, DRSS, RIV

FROM: Frank J. Congel, Director
Division of Safety
and Safeguards
Office of Nuclear Reactor Regulation

Malcolm R. Knapp, Director
Division of Waste Management
Office of Nuclear Materials Safety
and Safeguards

SUBJECT: 10 CFR 20.2002 INTERSTATE EVALUATIONS

This memorandum responds to a request for guidance from Region I (see enclosure) regarding the disposal of low-level radioactive materials pursuant to 10 CFR 20.302 (now 10 CFR 20.2002). As noted by Region I, Information Notice 86-90 does not address interstate disposal of radioactive materials; nor does it delineate who has the jurisdiction and authority to perform the 20.302 (20.2002) type of evaluation or who has the authority to approve the disposal of low-level radioactive materials for interstate situations. The paragraphs which follow present our recommendations for handling 20.2002 applications from licensees for the various possible combinations of Agreement/non-Agreement States which exist.

The three situations posed by Region I can be put into two categories based solely on the final resting location of the material to be disposed; either the State which will be receiving the material is an Agreement State or it is not. ~~It does not matter whether the originating state (the one where the licensee resides) is an Agreement State.~~

- When the out-of-state disposal location (relative to the location of the reactor licensee) is in a non-Agreement State, the NRC will review the application for disposal of radioactive materials. The NRC is responsible for authorizing the disposal of licensed low level radioactive material in the non-Agreement State. The authorization would normally be an approval in accordance with the provisions of 20.2002. In special cases, the authorization could be an approval for transfer, in accordance with 30.41(b)(7), 40.51(b)(7), or 70.42(b)(7) to any person (including non-licensees) as authorized by the Commission in writing. For licensees other than Part 50 licensees, the authorization may take the form of a specific amendment issued to the licensee. In any case, the disposal of licensed low level radioactive material in the non-Agreement State must be authorized by the NRC in accordance with NRC policy and regulations.

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- When the out-of-state disposal location (again, relative to the location of the reactor licensee) is in an Agreement State, the receiving Agreement State has jurisdiction for the regulating and authorizing of the disposal within its boundaries. This situation is similar to that discussed in Information Notice 88-22 where the disposal site is in an Agreement State. In this case, it is necessary for the licensee to obtain approval from the Agreement State for the disposal of licensed byproduct material.

For a situation that does not involve waste disposal, but rather extended onsite storage of low-level waste within the exclusion area of a nuclear power plant site or on the property of an NRC-licensed non-reactor facility, NRC retains jurisdiction, regardless of whether the location is in an Agreement State or not.

In addition to the issue concerning Agreement State authority for low-level waste disposals, another related issue is the role and authority of regional LLW compacts for these disposals, when they involve transfers between States and/or compacts. The Low-Level Radioactive Waste Policy Amendments Act of 1985, although it maintains licensing responsibilities for Agreement States and NRC in accordance with the Atomic Energy Act, also gives regional compacts authority to require waste generated in their region to be disposed of in the regional facility, or to prohibit the import of waste from outside of the region for disposal. Thus, the compacts, consistent with their interest in assuring waste disposal on a regional basis decided by the States and compacts, have significant authority in this area and could, if they so choose, restrict the use of "20.2002" disposals. Licensees wishing to dispose of waste out-of-State should consult with the affected States and compacts to ensure that they approve of such disposals. NRC should ask for and evaluate this information in its consideration of 20.2002 disposals.

Please contact Tom Essig at (301) 504-1068 or James Kennedy at (301)-415-6668 if you have any questions about this matter.

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 Frank J. Congel, Director
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 Office of Nuclear Reactor Regulation

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 Malcolm R. Knapp, Director
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Enclosure: As stated

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November 19, 1993

MEMORANDUM FOR: Frank J. Congel, Director
Division of Radiation Safety and Safeguards
Office of Nuclear Reactor Regulation

FROM: Charles W. Hehl, Director
Division of Radiation Safety and Safeguards, Region I

SUBJECT: 10 CFR 20.302 EVALUATIONS

The purpose of this memorandum is to call to your attention an issue which we believe is generic and for which further guidance may be needed. The issue concerns the disposal of low-level radioactive materials pursuant to 10 CFR 20.302 (10 CFR 20.2002) or the Agreement State regulations.

IE Information Notice 86-90 for nuclear reactor licensees informed those licensees of the authority of the Agreement State, when the facility was located in the Agreement State, to perform the reviews and approvals for §20.302-type disposals. The NRC performs the reviews and approvals when the facility is located in a Non-Agreement State. The Information Notice appears to assume that the proposed disposal will occur in the State in which the facility is located. When that assumption is true, then the guidance in the Information Notice is clear.

However, the Information Notice did not address interstate disposal of radioactive materials. Guidance may be needed delineating who has the jurisdiction and authority to perform the §20.302-type evaluation and approval of disposal of low-level radioactive materials for the following interstate examples.

1. Low-level radioactive waste originating in an Agreement State which will be disposed in a Non-Agreement State.
2. ~~Low-level radioactive waste originating in an Agreement State which will be disposed in another Agreement State.~~
3. Low-level radioactive waste originating in a Non-Agreement State which will be disposed in an Agreement State.

Examples of the first and third situations have arisen in Region I.

1. Indian Point, Unit 3, wanted to dispose of river dredging material, which contained low levels of radioactive materials, at a New Jersey site. Thus, the material would be going from an Agreement State (New York) to a Non-Agreement State (New Jersey). Initial guidance from NRR indicated that the State of New York should perform the

§20.302-type evaluation, even though the material would be disposed of in a Non-Agreement State. In this case the State in which the material originated was to do the evaluation and approval for a disposal in another State. It is not clear that the originating, rather than the receiving, State should or would have the authority under the Agreement State status to evaluate and approve disposal in the receiving State. (Note: The material in question has not yet been disposed and is still on a barge on the Hudson River. New York now intends to evaluate the application for possible disposal in New York.)

2. Vermont Yankee proposed disposing of sewage sludge containing low levels of radioactive materials in New York State. Several New York sewage treatment plants were willing to take the material. New York was willing to perform the necessary evaluations and approvals to authorize those disposals in New York. In this case, the material would go from a Non-Agreement State (Vermont) to an Agreement State (New York), so that the State receiving the material for disposal would evaluate and approve the disposal within the State by authority in its Agreement State status. (Note: Vermont Yankee ultimately selected another mode of disposal.)

To be consistent with the initial NRR guidance in example 1 above, if the material went to another Agreement State, for example, Maryland, would Maryland be expected to rely on New York's evaluation and approval, rather than its own? It appears to us that the receiving State (if an Agreement State) or the NRC (if a Non-Agreement State) should have the jurisdiction for the evaluation and approval of material within the State. We note that this concept would be the same as Agreement States with low-level disposal sites (Barnwell, South Carolina and Envirocare - Utah) relative to disposals of low-level radioactive wastes disposed in accord with 10 CFR 20.301(a) or 10 CFR 20.2001(a), regardless of location of origin.

The above examples are used to illustrate some apparent inconsistencies in determining which State, according to NRC, is deemed to have the authority and jurisdiction to perform the requisite evaluations and approvals for disposal. We request that you review these examples and determine if generic guidance is needed for licensees to clearly understand the authorities and jurisdictions for interstate disposals. While the above discussions have related to reactor facilities, they could apply to fuel facility or by-product materials licensees as well.

Frank J. Congel

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Please contact Robert Bores of my staff at 215-337-5213 if you have any questions about this matter.

Original Signed By:

**Charles W. Hehl, Director
Division of Radiation Safety and
Safeguards**

cc:

**J. Greeves, NMSS/LLWM
C. Paperiello, NMSS/IMNS
R. Bangart, State Programs**

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