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September 5, 2006

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Chief, Rules and Directives Branch
U.S. Nuclear Regulatory Commission
Mail Stop T6-D59
Washington, DC 20555-001

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RE: Federal Register Notice: Request for Comments on the Nuclear Regulatory Commission's Low-Level Radioactive Waste Program

The enclosed comments on the U.S. Nuclear Regulatory Commission's Federal Register notice are submitted on behalf of the state of Washington, host-state to the Northwest Interstate Compact. We appreciate having the opportunity to comment on these important issues.

Sincerely,

Larry Goldstein
Section Manager
Nuclear Waste Program
Northwest Interstate Compact Committee Member

SUNSI Review Complete

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Nuclear Regulatory Commission Federal Register Notice
Request for Comments on the Nuclear Regulatory
Commission's Low-Level Radioactive Waste Program

Regarding the Current LLW Disposal Regulatory System

1. What are your key safety and cost drivers and/or concerns relative to LLW disposal?

The intent of the Northwest Compact is to protect the health and safety of citizens while providing for the most economical management of LLW (LLW) on a continuing basis. To accomplish this, the compact provides generators within our member states as well as those of the Rocky Mountain Compact with assured access for disposal of all classes of LLW at a Part 61 licensed facility. The host state, Washington, regulates the disposal costs charged by the site operator of the Richland facility to ensure rates are maintained at a reasonable level. It is important that generators understand there are costs associated with providing assured disposal access.

2. What vulnerabilities or impediments, if any, are there in the current regulatory approach toward LLW disposal in the U.S., in terms of their effects on:

a. Regulatory system reliability, predictability, and adaptability

The LLW Policy Amendments Act (Act) makes it a state/compact responsibility to determine how to best address their generators LLW disposal requirements. The Act is flexible enough to accommodate unanticipated developments such as the opening of the EnergySolutions disposal facility in Utah. Unfortunately, many states/compacts have either chosen or been forced to rely on disposal options located outside of their state or interstate compact. Until these states/compacts are able to develop disposal capacity or enter into access agreements with other states/compacts they will continue to be vulnerable to changes in disposal access and costs. Changes to the current regulatory approach may provide limited relief but a long-term solution requires that states/compacts address their disposal access issues. It remains important that the burden of LLW disposal be distributed equitably among states throughout the nation.

b. Regulatory burden (including cost)

The most important component of a long-term solution is for states/compacts to develop assured disposal access. Regulatory changes may provide limited relief but it will not provide a long-term solution.

c. Safety, security, and protection of the environment

These criteria can best be addressed by assuring access to a Part 61 licensed disposal facility. Although such wastes can be safely stored, permanent disposal is preferred. States/compacts need to focus on site development or agreements that provide assured access.

Potential Alternative Futures

3. *Assuming the existing legislative and regulatory framework remains unchanged, what would you expect the future to look like with regard to the types and volumes of LLW streams and the availability of disposal options for Class A, B, C, and greater-than-class-C (GTCC) LLW five years from now? Twenty years from now? What would more optimistic and pessimistic disposal scenarios look like compared to your "expected future?"*

Five years from now

The volume of Class A waste may increase as utilities and other institutions located in states/compacts without Class B and C access do what they can to decrease generation of Class B and C LLW. The Northwest Compact will continue to provide assured access for disposal of all classes of LLW to its member states as well as the member states of the Rocky Mountain Compact. The Atlantic Compact will do the same. If Barnwell closes to out-of-region waste as scheduled thirty-six states will not have access for disposal of Class B and C LLW and will have to store these wastes. This would be reduced to thirty-four states should Texas approve the Waste Control Specialist license application for development of a facility in Texas.

States/compacts without disposal facilities or access agreements will continue to rely on access to EnergySolutions for disposal of Class A LLW. Generators within these states will be vulnerable to disposal costs charged by these facilities as well as possible changes in access over time. Hopefully the loss of Class B and C disposal access could provide a catalyst for the development of new disposal capacity within these states.

Twenty years from now

The Northwest Compact will continue to provide assured access for disposal of all classes of LLW to its member states as well as the member states of the Rocky Mountain Compact. The Atlantic Compact will do the same. If the Waste Control Specialist application is approved the Texas Compact will do the same. Hopefully, states/compacts that lose Class B and C disposal access once Barnwell closes will either develop disposal capacity or enter into access agreements to address their needs. Waste volumes within states/compacts with nuclear utilities could increase if decommissioning were to proceed as originally envisioned.

What would more optimistic and pessimistic disposal scenarios look like compared to your "expected future"?

Optimistic

The Northwest Compact would provide assured access for disposal of all classes of LLW to generators located within its member states as well as the member states of the Rocky Mountain Compact. The Atlantic Compact would provide assured access for its three member states. The Texas Compact has an operating disposal facility serving its member states. At least one additional disposal

facility is developed. All states/compacts have assured access for disposal of all classes of LLW. The U.S. Department of Energy develops disposal capacity for Greater Than Class C (GTCC) waste.

Pessimistic

No new sites are developed, the Policy Amendments Act is abolished, and the U.S. Department of Energy is still working to develop disposal capacity of GTCC waste. With the loss of exclusionary authority the state of Washington terminates the site operator's sublease for operation of the Richland, Washington disposal facility.

4. How might potential future disposal scenarios affect LLW storage and disposal in the U.S., in terms of:

a. Regulatory system reliability, predictability, and adaptability

The Act is adaptable and puts the onus on individual states/compacts to develop disposal options that meet their generators needs. We don't know that future disposal scenarios will affect these criteria.

b. Regulatory burden (including cost)

We anticipate that disposal costs will continue to increase. The storage of LLW if required by thirty-four to thirty-six states could certainly increase costs for those businesses that use radioisotopes. This may result in the development of additional treatment and stabilization practices.

c. Safety, security, and protection of the environment

Although storage can be done safely, disposal is preferred. Development of one or two additional Part 61 licensed facilities will address this issue provided agreements can be reached whereby all states/compacts have access for disposal of all classes of LLW. States/compacts are responsible to determine how they can best meet the needs of their generators.

Can the Future be Altered?

5. What actions could be taken by NRC and other federal and state authorities, as well as by private industry and national scientific and technical organizations, to optimize management of LLW and improve the future outlook? Which of the following investments are most likely to yield benefits:

a. Changes in regulations

Limited impact

b. Changes in regulatory guidance

Limited impact

c. Changes in industry practices

This could have a reasonable impact. Utilities are already taking steps to reduce the amount of Class B and C LLW they are generating.

d. Other (name)

The key to any permanent solution is the ability of states/compacts to develop disposal capacity or access agreements that provides access for disposal of all classes of LLW generated within their state or compact. The Policy

Amendments Act puts states in control, as it should be, of their own destiny.

Changes in the regulations may provide some relief for certain generators but it

will not provide a solution. It remains important that the burden of LLW disposal be equitably distributed among states throughout the nation.

6. Are there actions (regulatory and/or industry initiated) that can/should be taken in regard to specific issues such as:

a. Storage, disposal, tracking and security of GTCC waste

Clearly delineating storage regulations may be helpful as we approach July 2008 where it appears thirty-four to thirty-six states may either choose or be forced to rely on the storage of Class B and C LLW. Tracking of GTCC waste may improve security risks associated with such waste.

b. Availability and cost of disposal of Class B and C LLW

This is up to the states that presently rely on disposal capacity located outside of their state or compact region. These states/compacts made this choice, but by doing so they are not in a position to control their destiny. Thirty-four to thirty-six states will rely on access to EnergySolutions for disposal of Class A waste starting July 1, 2008. By doing so their generators are subject to the disposal fees charged by the facility. The sooner states/compacts develop their own disposal options the sooner they will be in a position to meet the needs of their generators. Changes in the regulations would likely have only a limited impact.

c. Disposal Options for Depleted Uranium

Not familiar with the requirements

d. Extended Storage of LLW

Disposal is preferred to storage but this is an important area should Barnwell close to out-of-region LLW as scheduled. Clearly defining the regulations associated with storage will be of great assistance to states/compact that find themselves in the position of having to store LLW.

e. Disposal Options for low-activity waste (LAW)/very low-activity waste (VLLW)

Caution must be taken to ensure any new disposal options for low-activity waste do not result in unintended consequences by altering the waste streams presently either provided or denied access to the operating disposal facilities. Although this

may assist the generators of low-activity waste it will not provide a long-term solution.

f. On-site disposal of LLW

Need to ensure such action does not negatively impact public perception.

g. Other (name)

Assistance in educating the public on the safeguards of Part 61 disposal facilities may further the site development process.

7. What unintended consequences might result from the postulated changes identified in response to questions 5 and 6?

If low-activity and very low-activity wastes that are presently classified as LLW were reclassified so they were no longer LLW; access to existing disposal facilities could be altered and the economic viability of the operating facilities could be impacted.

In the Northwest Compact, no out-of-region LLW is provided access to the region for disposal at the Richland, Washington facility. The Northwest Compact exercised its authority to deny access to out-of-region low-level waste effective January 1, 1993. If certain LLW was reclassified as no longer being LLW they would gain access to the Richland, Washington facility. The exclusionary authority provided by federal law applies only to LLW.

Similarly, that portion of in-region low-level waste, historically disposed at the Richland, Washington facility, that was reclassified as other than LLW could be disposed elsewhere. This would impact the rates that those in-region low-level waste generators whose waste is still classified as low-level waste would have to pay. Under rate regulation the site operator is provided with a fixed annual revenue requirement. Thus as the generator base decreases the remaining generators are required to pay a higher unit cost.

Interagency Communication and Cooperation

8. Based on your observations of what works well and not-so-well, domestically and/or internationally, with regard to the management of radioactive and/or hazardous waste, what actions can the NRC and other Federal regulatory agencies take to improve their communication with affected and interested stakeholders?

Uncertain

9. What specific actions can NRC take to improve coordination with other Federal agencies so as to obtain a more consistent treatment of radioactive waste that possess similar or equivalent levels of biological hazard?

Uncertain