

**Northwest Interstate Compact**

On Low-Level Radioactive Waste Management

P.O. Box 47600, Olympia, Washington 98504-7600. (360) 407-7102. Mike Garner, Executive Director

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May 15, 2008

Mr. Stephen Dembek, Branch Chief  
Export Controls and International Organizations  
Office of International Programs  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

RE: Application for NRC Import License (IW023)

Dear Mr. Dembek:

Thank you for your February 19, 2008 letter requesting comments on EnergySolutions import license application (IW023). The import license application seeks authorization to import 20,000 tons of low-level radioactive waste from Italy. The request states that material which cannot be decontaminated or recycled will be processed at Duratek, a subsidiary of EnergySolutions, facilities in Tennessee and shipped to the EnergySolutions Clive, Utah facility for disposal. The amount of low-level waste requiring disposal is projected to amount to 3,200,000 lbs. or 80,000 cubic feet of low-level radioactive waste.

The Northwest Interstate Compact Committee met on Thursday, May 8, 2008, in Boise, Idaho. Under Articles IV and V of the statutes of the Northwest Compact (see attached), the committee determined it would have to adopt an arrangement prior to foreign low-level waste being provided access to the region for disposal at EnergySolutions facility in Clive, Utah. This did not occur.

The committee chose to adopt a clarifying resolution (see attached) reaffirming its position that the Third Amended Resolution and Order serves specifically as an arrangement for low-level radioactive waste from unaffiliated states and compacts. It further clarifies that the Third Amended Resolution and Order does not serve as an arrangement for foreign low-level radioactive waste, nor has the committee ever discussed such an arrangement for foreign low-level radioactive waste. The clarifying resolution also addresses foreign-generated waste that is characterized as domestic-generated waste by another compact or unaffiliated state. This has occurred with Canadian waste imported (import license IW017) to Duratek's Bear Creek facility in Tennessee.

Therefore, the Northwest Compact is notifying the U.S. Nuclear Regulatory Commission (NRC) that should it choose to issue the import license (IW023) it is doing so with the understanding there is no facility within the Northwest Compact region that is authorized to legally accept this waste for disposal.

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It is our understanding the NRC may delay its decision on the import license request until completion of the lawsuit filed by EnergySolutions against the Northwest Compact. If this is the case the Northwest Compact reserves its right to submit additional comments during this period. Should you have any questions please contact me (360/407-7102).

Sincerely,

A handwritten signature in cursive script that reads "Mike Garner". The signature is written in black ink and is positioned above the typed name.

Mike Garner, Executive Director  
Northwest Interstate Compact

cc: Northwest Compact Committee Members  
Enclosures

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**RESOLUTION CLARIFYING THE  
THIRD AMENDED RESOLUTION AND ORDER**

Whereas, the Compact Committee continues to support the Low-Level Radioactive Waste Policy Amendments Act, Public Law 99-240;

Whereas, no facility located in any party state may accept low-level radioactive waste generated outside the region comprised of the party states, prior to an arrangement being adopted by the Compact Committee in accordance with Articles IV and V of the Compact statute;

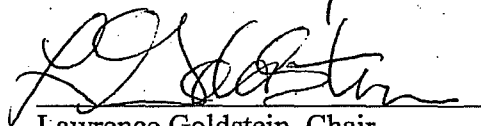
Whereas, the Compact Committee most recently approved on May 1, 2006, the Third Amended Resolution and Order that serves as an arrangement that provides certain access to the region to low-level radioactive wastes generated in unaffiliated states and compacts that meet the requirements of the Third Amended Resolution and Order for disposal at the EnergySolutions facility in Clive, Utah;

Whereas, the Third Amended Resolution and Order does not address foreign low-level radioactive wastes and the Compact Committee has never considered or reviewed the issue of adopting an arrangement that would provide low-level radioactive wastes generated in foreign countries access to the region for disposal at the EnergySolutions facility in Clive, Utah;

**BE IT HEREBY RESOLVED AND ORDERED THAT:**

The Third Amended Resolution and Order does not serve as an arrangement for disposal of low-level radioactive wastes generated in foreign countries – including foreign-generated waste that is characterized as domestic generated waste by another compact or unaffiliated state, and such an arrangement, as required by Articles IV and V of the Compact statutes, would need to be adopted by the Compact Committee prior to foreign-generated low-level radioactive wastes being provided access to the region for disposal at EnergySolutions facility in Clive, Utah.

As approved by the Northwest Interstate Compact on Low-Level Radioactive Waste Management, I execute this Resolution on the 12<sup>th</sup> day of May 2008.



Lawrence Goldstein, Chair  
Northwest Interstate Compact on  
Low-Level Radioactive Waste Management

**Chapter 43.145 RCW**  
**Northwest interstate compact on low-level radioactive waste management**

Chapter Listing

**RCW Sections**

43.145.010 Compact.

43.145.020 Requirements of Washington representative to Northwest low-level waste compact committee.

43.145.030 Rule-making authority.

**Notes:**

Radioactive Waste Storage and Transportation Act of 1980: Chapter 70.99 RCW.

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**43.145.010**  
**Compact.**

The Northwest Interstate Compact on Low-Level Radioactive Waste Management is hereby enacted into law and entered into by the state of Washington as a party, and is in full force and effect between the state and other states joining the compact in accordance with the terms of the compact.

NORTHWEST INTERSTATE COMPACT ON

LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

ARTICLE I – Policy and Purpose

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

ARTICLE II – Definitions

As used in this compact:

(1) "Facility" means any site, location, structure, or property used or to be used for the storage, treatment, or disposal of low-level waste, excluding federal waste facilities;

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than ten nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations;

(3) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste;

(4) "Host state" means a state in which a facility is located.

#### ARTICLE III – Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) Maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;

(2) Periodic unannounced inspection of the premises of such generators and the waste management activities thereon;

(3) Authorization of the containers in which such waste may be shipped, and a requirement that generators use only that type of container authorized by the state;

(4) Assurance that inspections of the carriers which transport such waste are conducted by proper authorities, and appropriate enforcement action taken for violations;

(5) After receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, the party state will take appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this Article. Nothing in this Article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this Article.

#### ARTICLE IV – Regional Facilities

Section 1. Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

Section 2. No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in Article V.

Section 3. Until such time as Section 2 takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate shall be in such form as may be required by the host state, and shall contain at least the following:

(1) The generator's name and address;

(2) A description of the contents of the low-level waste container;

(3) A statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by his agent or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state;

(4) A binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste during shipment or after such waste reaches the facility.

Section 4. Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprised of the party states, in order to maximize public health and

safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in their region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

Section 5. The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the state of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to such facilities by generators within other party states. Nothing in this compact may be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure or [of] such facilities, so long as such action by a host state is applied equally to all generators within the region composed of the party states.

Section 6. Any host state may establish a schedule of fees and requirements related to its facility, to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

#### ARTICLE V – Northwest Low-level Waste

##### Compact Committee

The governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest low-level waste compact committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states, and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprised of the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

#### ARTICLE VI – Eligible Parties and Effective Date

Section 1. Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

Section 2. After the compact has initially taken effect pursuant to Section 1, any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

Section 3. Section 2 of Article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every five-year period.

#### ARTICLE VII – Severability

If any provision of this compact, or its application to any person or circumstance, is held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid; and to this end the provisions of this compact are severable.

[1981 c 124 § 1.]

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**43.145.020**

**Requirements of Washington representative to Northwest low-level waste compact committee.**

The person designated as the Washington representative to the committee as specified in Article V shall adhere to all provisions of the low-level radioactive waste compact. In considering special conditions or arrangements for access to the state's facilities from wastes generated outside of the region, the committee member shall ensure at a minimum, that the provisions of Article IV, Section 3 are complied with. After 1992 the Washington representative may approve access to the state's facility only for the states currently members of the Rocky Mountain compact or states which generate less than one thousand cubic feet of waste annually and are contiguous with a state which is a member of the Northwest compact.

[1990 c 21 § 5; 1981 c 124 § 2.]

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**43.145.030**

**Rule-making authority.**

See RCW 43.200.070.