

EDO Principal Correspondence Control

FROM: DUE: 09/01/10 EDO CONTROL: G20100520  
DOC DT: 08/03/10  
FINAL REPLY:

Aubrey Godwin  
Southwestern Low-Level Radioactive  
Waste Commission (SWLLRWC)

TO:  
Chairman Jaczko

FOR SIGNATURE OF : \*\* GRN \*\* CRC NO: 10-0374  
Miller, FSME

DESC: ROUTING:  
Lack of Progress by State of California in Borchardt  
Resolving Incompatibility Issues with 10 CFR 61 Weber  
(EDATS: SECY-2010-0413) Virgilio  
Ash  
Mamish  
OGC/GC  
Brock, OEDO

DATE: 08/11/10

ASSIGNED TO: CONTACT:  
FSME Miller

SPECIAL INSTRUCTIONS OR REMARKS:

# EDATS

Electronic Document and Action Tracking System

**EDATS Number:** SECY-2010-0413

**Source:** SECY

## General Information

**Assigned To:** FSME

**OEDO Due Date:** 9/1/2010 11:00 PM

**Other Assignees:**

**SECY Due Date:** 9/1/2010 11:00 PM

**Subject:** Lack of Progress by State of California in Resolving Incompatibility Issues with 10 CFR Part 61

**Description:**

**CC Routing:** NONE

**ADAMS Accession Numbers - Incoming:** NONE

**Response/Package:** NONE

## Other Information

**Cross Reference Number:** G20100520, LTR-10-0374

**Staff Initiated:** NO

**Related Task:**

**Recurring Item:** NO

**File Routing:** EDATS

**Agency Lesson Learned:** NO

**OEDO Monthly Report Item:** NO

## Process Information

**Action Type:** Letter

**Priority:** Medium

**Signature Level:** FSME

**Sensitivity:** None

**Urgency:** NO

**Approval Level:** No Approval Required

**OEDO Concurrence:** NO

**OCM Concurrence:** NO

**OCA Concurrence:** NO

**Special Instructions:**

## Document Information

**Originator Name:** Aubrey Godwin

**Date of Incoming:** 8/3/2010

**Originating Organization:** Commission  
(SWLLRWC),Southwestern Low-Level Radioactive Waste

**Document Received by SECY Date:** 8/11/2010

**Addressee:** Chairman Jaczko

**Date Response Requested by Originator:** NONE

**Incoming Task Received:** Letter

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

*Date Printed: Aug 11, 2010 07:40*

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**PAPER NUMBER:** LTR-10-0374 **LOGGING DATE:** 08/11/2010  
**ACTION OFFICE:** ED/GC

**AUTHOR:** Abrey Godwin  
**AFFILIATION:** CA  
**ADDRESSEE:** Gregory Jaczko  
**SUBJECT:** Lack of progress by state of California in resolving incompatibility issues

**ACTION:** Appropriate  
**DISTRIBUTION:** RF

**LETTER DATE:** 08/03/2010  
**ACKNOWLEDGED:** No  
**SPECIAL HANDLING:** Made publicly available in ADAMS via EDO/DPC  
**NOTES:** EDO/OGC for Appropriate Action....  
**FILE LOCATION:** ADAMS

**DATE DUE:** **DATE SIGNED:**

**SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE COMMISSION**

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August 3, 2010

TO: Gregory B. Jaczko, Chairman  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001

SUBJECT: Lack of Progress by State of California in Resolving Incompatibility Issues

Honorable Chairman;

On August 20, 2007, the Nuclear Regulatory Commission (NRC) informed the State of California of incompatibility issues between 10 CFR 61 and California Health and Safety Code section 115261, regarding the Licensing Requirements for Land Disposal of Radioactive Waste. During the intervening years, the State of California has ignored the NRC on this matter and has done nothing to address the disparity. It is the belief of this Commission that the failure of the State of California to respond to these NRC concerns has made it impossible to develop a low-level radioactive waste (LLRW) disposal facility in our region.

The primary duty of the SWLLRWC is to ensure that LLRW are safely disposed of and managed within the region. Currently, all Class A low-level radioactive waste generated here is shipped outside the region to a single facility in Utah for disposal, along with the waste of 28 other States. The capacity of this facility is not unlimited. There is also currently no disposal option for Class B and C waste generated in our region, and as a consequence it is building up in storage at Waste Generator's facilities. It is the belief of this Commission that this is a very dangerous situation, and that it is only a matter of time before there will be disastrous consequences. Development of a LLRW disposal facility in our region is an immediate necessity, is required by law, and is long overdue.

But in the three years since the NRC informed the State of California of the incompatibility nothing has happened. The SWLLRWC has repeatedly asked the responsible staff of the State of California to take corrective action in this regard, to no avail. Finally, on August 28, 2009 the SWLLRWC sent a letter to the Governor of California asking for action. To date the Governor has ignored the issue and not replied.

The problem is that the incompatible requirement in California Health & Safety Code section 115261 is impossible to meet. It states: "The department may issue a license to dispose of low-level radioactive waste pursuant to this chapter only if the department determines there is a preponderance of scientific evidence that there is not a hydrologic pathway whereby the Colorado River or any other agricultural or drinking water source could be contaminated with radioactive waste and harm public health or the environment". NRC emphasizes this requirement is incompatible with 10 CFR 61 which states that: "Reasonable effort should be made to maintain releases of radioactivity in effluents to the general environment as low as is reasonably achievable." Unless this incompatibility is corrected, a LLRW disposal facility can never be built in our region.

It is the belief of this Commission that the situation has reached a critical stage. Unless the NRC takes further action on this matter, the safe disposal of LLRW in our region will remain in jeopardy with possible disastrous consequences. The safety of millions of people is at stake. We urge you to contact the Governor and Attorney General of the State of California and insist that this matter be resolved.

Sincerely,

Aubrey Godwin, Chairman

Southwestern Low-Level Radioactive Waste Commission

Enclosure: NRC Letter, August 20, 2007

CC: AZ, CA, ND, SD Governors  
SWLLRWC Commissioners

August 20, 2007

Gary W. Butner, Acting Chief  
Radiologic Health Branch  
CA Department of Health Services  
P.O. Box 997414, MS 7610  
Sacramento, CA 95899-7414

Dear Mr. Butner:

We have reviewed California's "Health and Safety Code- Radiation Control Law" contained in Section 115261 received by our office on June 25, 2007. The legislation was reviewed by comparison to 10 CFR 61, "Licensing Requirements for Land Disposal of Radioactive Waste". We discussed our review of the legislation with you on August 9, 2007.

We offer the following comments:

1. As noted in a letter to the State dated April 9, 2002, California proposed an amendment that would "ensure no radioactive material will be released into the environment." This is not compatible with NRC's requirements in 10 CFR 61. While that specific statement is not in the latest version of Section 115261 sent in for NRC review, there is a requirement that states:

"The department may issue a license to dispose of low-level radioactive waste pursuant to this chapter only if the department determines there is a preponderance of scientific evidence that there is not a hydrologic pathway whereby the Colorado River or any other agricultural or drinking water source could be contaminated with radioactive waste and harm public health or the environment."

This is incompatible with 10 CFR 61.41, one requirement of which states that:

"Reasonable effort should be made to maintain releases of radioactivity in effluents to the general environment as low as is reasonably achievable."

Due to 10 CFR 61 having a Compatibility Category A designation, California's statute is more restrictive, and does not meet the compatibility Category A designation assigned to 10 CFR 61.41. California needs to adopt the language of 10 CFR 61.41 to meet the Compatibility Category A designation of the rule.

2. Also noted in the letter dated April 9, 2002, was California requirement that "any low-level radioactive waste site licensee provide continual monitoring and repackaging of materials to prevent release." The latest version of Section 115261 sent in for NRC review no longer has the waste repackaging requirement, but the requirement for continual monitoring still remains in 115261(b)(2), which states:

"Provide visual inspection or remote monitoring to detect potential or actual releases of low-level radioactive waste from the engineered barriers."

This requirement appears to define a LLW storage facility, not a disposal facility. As such, this requirement of the California legislation is incompatible with those of NRC under the Agreement.

We recommend that you address the two comments above concerning the authority provided to the Department concerning Low Level Radioactive Waste Disposal. California may resolve these comments through revision or interpretation of State law. NRC will accept interpretations provided by the State Attorney General, or other attorney designated as legal advisor to the radioactive materials program.

If you have any questions regarding the comments, please contact Kathleen Schneider, State Regulation Review Coordinator at 301-415-2320 (email: [kxs@nrc.gov](mailto:kxs@nrc.gov)) or William Rautzen at 301-415-7206 (e-mail: [wrr@nrc.gov](mailto:wrr@nrc.gov)).

Sincerely,

**IRA By**

Robert J. Lewis, Deputy Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials  
and Environmental Management Programs