

EDO Principal Correspondence Control

FROM: DUE: 03/07/12

EDO CONTROL: G20120106  
DOC DT: 01/31/12  
FINAL REPLY:

Aubrey V. Godwin  
Southwestern Low-Level Radioactive  
Waste Commission

TO:

Chairman Jaczko

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO: 12-0063

Chairman Jaczko

DESC:

Incompatibility Issue that Exists in California's  
Statute - IMPEP (Integrated Materials Performance  
Evaluation Program) Process  
(EDATS: SECY-2012-0087)

ROUTING:

Borchardt  
Weber  
Virgilio  
Ash  
Mamish  
OGC/GC  
Collins, RIV  
Merzke, OEDO

DATE: 02/22/12

ASSIGNED TO:

CONTACT:

FSME

Satorius

SPECIAL INSTRUCTIONS OR REMARKS:

# EDATS

Electronic Document and Action Tracking System



**EDATS Number:** SECY-2012-0087

**Source:** SECY

## General Information

**Assigned To:** FSME

**OEDO Due Date:** 3/7/2012 11:00 PM

**Other Assignees:**

**SECY Due Date:** 3/9/2012 11:00 PM

**Subject:** Incompatibility Issue that Exists in California's Statute - IMPEP (Integrated Materials Performance Evaluation Program) Process

**Description:**

**CC Routing:** RegionIV; OGC

**ADAMS Accession Numbers - Incoming:** NONE

**Response/Package:** NONE

## Other Information

**Cross Reference Number:** G20120106, LTR-12-0063

**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:** Chairman Jaczko

**Sensitivity:** None

**Approval Level:** No Approval Required

**Urgency:** NO

**OEDO Concurrence:** YES

**OCM Concurrence:** NO

**OCA Concurrence:** NO

**Special Instructions:**

## Document Information

**Originator Name:** Aubrey V. Godwin

**Date of Incoming:** 1/31/2012

**Originating Organization:** Southwestern Low-Level Radioactive Waste Comm.

**Document Received by SECY Date:** 2/22/2012

**Addressee:** Chairman Jaczko

**Date Response Requested by Originator:** NONE

**Incoming Task Received:** Letter

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

Date Printed: Feb 17, 2012 10:29

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**PAPER NUMBER:** LTR-12-0063 **LOGGING DATE:** 02/15/2012  
**ACTION OFFICE:** EDO

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

**ACTION:** Signature of Chairman  
**DISTRIBUTION:** RF, SECY to Ack

**LETTER DATE:** 01/31/2012

**ACKNOWLEDGED** No  
**SPECIAL HANDLING:** Commission Correspondence.....  
Made publicly available in ADAMS via EDO/DPC

**NOTES:** Rec'd in SECY 2/15/12

**FILE LOCATION:** ADAMS

**DATE DUE:** 03/09/2012 **DATE SIGNED:**

EDO --G20120106



## **SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE COMMISSION**

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January 31, 2012

Honorable 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**

Dear Chairman Jaczko;

The Commissioners of the Southwestern Low-Level Radioactive Waste Commission (Commission) have reviewed your staff's August 8, 2011 letter on this subject and asked me to express our disappointment with NRC's position. Our Commission has asked you to contact the Governor and Attorney General of the State of California to resolve the incompatibility issue that exists in California's statute, Health and Safety Code Section 115261. Your staff informed our Commission that NRC is using the IMPEP process to follow the States progress and has not identified "any performance or compliance issues in California that warrant NRC contact with the Governor or the Attorney General at this time."

Our Commission is equally discouraged by NRC's use of the IMPEP process to follow up and correct the incompatibility issue. We believe this issue merits a higher level of attention. That the incompatibility exists is a fact. The statute with the incompatible language, Health and Safety Code section 115261, has existed since September 12, 2002. NRC determined that the language at issue is incompatible in NRC letter dated August 20, 2007. In that letter NRC recommended the CA Radiologic Health Branch address the incompatibility stating: "California may resolve these comments through revision or interpretation of State law. NRC will accept interpretations provided by the State Attorney General...." For over four years, the Radiologic Health Branch has been unable to get the attention of the Attorney General to correct the issue.

Our Commission has repeatedly asked the Governor of CA to take action to no avail. He wouldn't even answer our letters, an affront that did not go unnoticed by me and the Commissioners from North Dakota and South Dakota given language in our Compact which states: "Each party state may rely on the good faith performance of the other party states to perform those acts which are required by this compact to provide regional disposal facilities...." (Public Law 100-712, Sec. 5, Art 4(f)(6)). In any case, almost 10 years have passed since enactment of the statute and almost 5 years have passed since NRC asked the CA Radiologic Health Branch to correct the issue. It is our opinion that the use of the IMPEP process will only further delay resolution.

Your staff takes the position that "States in the Southwestern Low-Level Radioactive Waste Compact have current options for the disposal of Class A waste, and ... additional options for the disposal of Class A, B, and C waste may be available in the near future," specifically the Clive facility in Utah and the soon to be operational WCS facility in Texas. In other words you imply our Commission has adequate disposal capacity and should "not be rocking the boat" about furthering the development of a California facility. Arguably you are correct but will that capacity be available in the future when the people of Utah and Texas start complaining about their States being the nation's low-level radioactive waste (LLRW) dumping sites as has occurred in the past at other now closed sites? Or, will there be adequate capacity available should a disaster such as occurred in Japan with the recent tsunami happen here? Our Commission firmly believes that it is in NRC's best interest to encourage further development of regional disposal facilities.

Your staff also states that NRC is not aware of any prospective applicant for a CA LLRW disposal facility license and that if one shows up, there is ample time for CA to amend the incompatible language in section 115261. For your information, the California Legislature already attempted to repeal the offending statute in early 2003 (AB 926) but failed. Furthermore, our Commission argues that the existing statutory language is what is keeping potential applicants from applying. Comment, We believe that the current law is so chilling that no applicant will apply for a license on the chance that the legislature will change the law.

The primary duty of the SWLLRWC is to ensure that LLRW are safely disposed of and managed within the region. Development of a LLRW disposal facility in our region is long overdue. It is important to remove any impediments that stand in the way of such development. NRC is in a superior position to make this happen. Again, Chairman Jaczko,

please contact the Governor and/or Attorney General of the State of California to resolve the incompatibility issue that exists in California's Health and Safety Code Section 115261.

Sincerely,

A handwritten signature in black ink, appearing to read "Aubrey V. Godwin". The signature is fluid and cursive, with the first name being the most prominent.

Aubrey V. Godwin, Chairman  
Southwestern Low-Level Radioactive Waste Commission

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