

PR 10 CFR Part 110
(77FR02924)

March 6, 2012 (8:00 am)

Northwest Interstate Compact

On Low-Level Radioactive Waste Management

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

March 5, 2012

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Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemaking and Adjudications Staff

RE: Comments on Docket ID NRC-2012-0008

The following comments pertain to the U.S. Nuclear Regulatory Commission's Branch Technical Position on the Import of Non-U.S. Origin Radioactive Sources. The comments should not be interpreted to mean the Northwest Compact has issue with the Branch Technical Position, the International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources, or the IAEA Supplemental Guidance on the import and Export of Radioactive Sources. The comments are intended to point out unintended consequences that may occur as a result of the Branch Technical Position.

The Introduction Contains the Following Paragraph:

There are six exclusions in 10 CFR Part 110.2 to the definition of "radioactive waste." The sealed source exclusion (exclusion one) is defined as radioactive material that is [of U.S. origin and contained in a sealed source, or device containing a sealed source, that is being returned to a manufacturer, distributor or other entity which is authorized to receive and possess the sealed source or the device containing a sealed source.]¹ Disused sources that satisfy an exclusion to the definition of "radioactive waste" may be imported under the general license in 10 CFR Part 110.27, which requires that the U.S. consignee be authorized to receive and possess the material under the relevant NRC or Agreement State regulations and that the importer satisfy the terms for the general license set forth in 10 CFR Part 110.50

Although this is a good policy, this could result in orphan waste as follows:

1. If, after use in a foreign country, the source is returned to the U.S. source manufacturer, who is located **within** a member state of the Northwest Compact.
 - The Washington State Department of Ecology regulation (Chapter 173-326 Commercial Low-Level Radioactive Waste Disposal – Site Use Permits) provides the following definition for "generator."

"Generator" means the last person who puts radioactive material to practical use, and who then declares it to be no longer of use or value.

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- Therefore, the foreign entity that purchased the sealed source and put the material to practical use would be considered to be the generator, not the U.S. source manufacturer to whom the source is returned. In this case it would be considered foreign generated waste and would not be eligible for disposal at the Richland commercial low-level radioactive waste disposal facility (Richland facility).
 - Note: In the case where a foreign manufactured source is sold to an entity within a member state of the Northwest Compact. Following its useful life, this source would be eligible for disposal at the Richland facility as it was last put to practical use by a generator located within a member state of the compact.
 - This interpretation may be different if the sources were leased, not sold, by the U.S. source manufacturer and then returned to the manufacturer following their useful life. Review is needed to ensure this is the case.
2. If, after use in a foreign country, the source is returned to the U.S. source manufacturer, who is located in a state **outside** of the Northwest Compact. Note: *This example would only apply if EnergySolutions receives an amendment from the State of Utah to accept Class A sources.*
- This could be considered to be “foreign” waste by the Northwest Compact as its entire usefulness took place in a foreign country. To date, the compact has not formally considered this question as EnergySolutions is not licensed to accept sealed sources for disposal. Further review of this issue is needed.
 - Should the Northwest Compact determine such waste to be foreign waste, the waste would not have access to the region for disposal at the Clive, Utah facility.

Footnote 4 includes the following two sentences:

Sometimes the sources are still useful and can be recycled for re-use in a different application. In that case, the sixth exclusion to the definition of “radioactive waste” applies and the source can be imported under a general license even if it is non-U.S. origin.

This is consistent with exclusion six found in 10 CFR Part 110.2 regarding the definition of “radioactive waste.” The Northwest Compact agrees that when materials can be recycled from a non-U.S. origin source, then any remaining materials from the source requiring disposal would be eligible for disposal at the Richland or Clive facilities dependent on the location of the source recycler. However, what happens when the material contained in imported non-U.S. sources cannot be recycled?

- Example: One hundred non-U.S. sources are imported for recycling but once received it is evident that only fifty sources are capable of being recycled. The fifty sources that had no recycle value would not have access to the Richland, Washington or Clive, Utah disposal facilities, as these would be considered to be foreign waste as the recycler was unable to obtain any useful material from these sources.

This issue may be addressed by the establishment of more definitive guidelines regarding what constitutes legitimate recycle. For example:

- Did the entity that imported the non-U.S. sources for recycle pay for the sources? This establishes a higher bar if the recycling entity pays to import the sources.
- When importing non-U.S. sources does recycling have to be successful in 90, 75, 50, 25, or 1 percent of the sources before all the unused material from all the imported sources is eligible for disposal?

- Can imported non-U.S. sources that fail to produce recyclable material be returned to the foreign entity from which they were received?
- There need to be some viable guidelines to address what constitutes legitimate recycling.

The Northwest Compact, to address this concern, has established a high standard to help ensure used domestic sources are not sent to a source recycler within the region simply to gain disposal access. To date, the compact has taken the position that out-of-region sources may be imported for recycling, but only those materials remaining from sources from which materials have been successfully recycled are eligible for disposal access to the Richland facility. Without such a policy, there is no incentive for other interstate compacts to develop the capacity to properly handle spent sealed sources. In many cases the source recycler is paid to take the sources. Our policy may be different if source recyclers actually paid to receive the used sources.

Sincerely,



Mike Garner, Executive Director
Northwest Interstate Compact

cc: Northwest Compact Committee

Rulemaking Comments

From: Garner, Mike (ECY) [JAMG461@ECY.WA.GOV]
Sent: Monday, March 05, 2012 6:42 PM
To: Rulemaking Comments
Subject: Northwest Compact comments on Docket ID NRC-2012-0008
Attachments: 20120305153246247.pdf

Attached are the Northwest Compact's comments on Docket ID NRC-2012-0008. Thank you for providing the opportunity to comment on the Branch Technical Position.