

July 02, 2012

Mr. Aubrey Godwin, Chairman
Southwestern Low-Level Radioactive
Waste Commission
1731 Howe Avenue #611
Sacramento, CA 95825

Dear Mr. Godwin:

This letter responds to your letter dated May 18, 2012, to Chairman Jaczko requesting that the U.S. Nuclear Regulatory Commission (NRC) provide a clarification as to its understanding regarding the issues surrounding the compatibility of California's low-level radioactive waste (LLRW) program with the NRC regulations. In your letter, you express confusion over our March 26, 2012, response to your January 31, 2012, letter related to this subject. You state that your confusion arises from the fact that California has been designated as a host state of the Southwestern Low-Level Radioactive Waste Commission (Southwest Compact Commission) and has in place a regulatory program which meets the criteria for a LLRW program. You do not understand why a review of the LLRW program was not conducted. You conclude by requesting us to assist you in understanding the California compatibility situation as related to its designation as a host state and whether California can license a LLRW disposal site consistent with Title 10 of the *Code of Federal Regulations* Part 61.

The NRC has received four prior letters from you dated August 3, 2010, January 20, 2011, June 15, 2011, and January 31, 2012, related to your concern that the State of California has not addressed NRC's comments concerning incompatibility between NRC regulations and the California Health and Safety Code regarding the licensing requirements for land disposal of radioactive waste, which you believe has resulted in failure to develop a low-level waste disposal site in your region, and requesting the NRC to contact the Governor and Attorney General of the State of California regarding this matter. In our responses to these letters, dated September 14, 2010, February 18, 2011, August 8, 2011, and March 26, 2012, we expressed our understanding of the Southwest Compact Commission's concern about the compatibility of California's LLRW disposal program with NRC's program.

We reiterate that we do understand the Southwest Compact Commission's concern about the compatibility of California's LLRW disposal program with the NRC's program. Even though California is designated as host state as a part of the Southwest Compact Commission, to our knowledge there is no application for or expressed interest in building a LLRW disposal facility in California. Consequently, the State of California does not have an active LLRW program and the NRC has no need to review its regulatory program. As we explained in our prior responses, it is outside of the NRC's regulatory authority to compel the State of California to build and license a LLRW facility.

With regard to your statement that what you are really seeking is our assistance in requiring California to comply with the compatibility requirements, as we explained in our prior responses, the NRC has had numerous contacts with California state officials on this issue, and the California Department of Health Services has been updating the NRC on its activities to address this concern as part of the NRC's Integrated Material Performance Evaluation Program (IMPEP). Finally, regarding your statements that the NRC may have to make "Emergency Access" should a breakdown of the present system of disposal occur resulting in a threat to public health and safety, the NRC is unaware of any indication that there may be a need for such access, and you have not provided any information that such a breakdown may occur.

The compatibility of California's regulations will continue to be reviewed during California's next IMPEP, which is scheduled for 2015. The NRC staff will continue to review changes to California legislation and regulations as they are amended, to ensure they are adequate to protect public health and safety and compatible with NRC requirements. If the State of California were to revise its LLRW program, then the NRC would review its revised program.

In summary, your letter has not provided the NRC with any new information that would lead us to reconsider our position on this issue. Absent such specific information, and given that the NRC continues to see no performance or compliance issues regarding the California LLRW program, further exchanges of correspondence with your organization on this matter are not likely to lead to a different conclusion.

Sincerely,

/RA/

Mark A. Satorius, Director
Office of Federal and State Materials
and Environmental Management Programs

cc: Gonzalo Perez, Branch Chief
California Radiologic Health Branch

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Mark A. Satorius, Director
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and Environmental Management Programs

cc: Gonzalo Perez, Branch Chief
California Radiologic Health Branch

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