

Northwest Interstate Compact

On Low-Level Radioactive Waste Management

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December 21, 2012 (5:15 pm)

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

OFFICE OF SECRETARY
RULEMAKINGS 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 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 "Background" section of the current Branch Technical Position contains the following sentence:

The NRC's willingness to embrace this policy was in large part informed by U.S. industry comments that there is a "widely accepted practice, usually rooted in a sales or leasing contract or other agreement, of returning depleted sealed radioactive sources, used gauges, and other instruments containing radioactive materials...to the original supplier-manufacturer for recycle or disposal.

The above sentence refers to return of "depleted" sealed radioactive sources, which, by definition, means the useful life of the returned radioactive sealed source is exhausted or used up. This is the reason the Northwest and Atlantic Compacts would view such sources as foreign low-level waste. Following purchase from a U.S. manufacturer, the source spent its entire useful life employed for its specific purpose in a foreign country. So although the Branch Technical Position would allow such sources to be returned to the manufacturer as material, in reality the radioactive sealed source actually became waste following its use within a foreign country, prior to its return to the U.S. manufacturer.

The sentence also references return "...to the original supplier-manufacturer for recycle or disposal." The Northwest Compact believes the NRC should acknowledge that limited disposal options may be available to the returned sources. This could be done by either: 1) adding a paragraph following the first paragraph of the "Background" section or, 2) adding a footnote to the term "disposal" in the above referenced sentence.

ALASKA. HAWAII. IDAHO. MONTANA. OREGON. UTAH. WASHINGTON. WYOMING

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Paragraph Recommendation

Parties accepting the return of a radioactive sealed source following its use in a foreign country should recognize that limited disposal access may exist for the returned source. Three of the four operating Part 61 commercial disposal facilities in the U.S. are located in interstate compacts that may view the returned source as foreign low-level radioactive waste, as the returned source was last put to practical use within a foreign country.

Footnote Recommendation

Retuned sources may have limited disposal access as the interstate compacts in which three of the four operating Part 61 commercial disposal facilities in the U.S. are located may view the returned radioactive sealed sources as foreign low-level waste and would not provide access for disposal.

The primary authority provided to interstate compacts by federal law is an exemption to the Commerce Clause that allows the compacts to deny access for disposal of out-of-region low-level waste at operating disposal facilities located within their region. Accepting foreign low-level waste for disposal is a significant issue for the citizens of the two sited states within the Northwest Compact, Utah and Washington. It is difficult to envision the return of a "depleted" radioactive sealed source as anything other than the return of waste that was generated within a foreign country. Without such a policy, there is little incentive for out-of-region states or foreign countries to develop the capacity to properly handle radioactive sealed sources following their useful life.

The Northwest Compact would provide disposal access for sources returned to a source manufacturer located within the Northwest or Rocky Mountain Compacts provided the source can either be put to another beneficial use following its return, or from which recyclable material can be obtained for future use, such as the manufacture of a new radioactive sealed source. Attached is a flow chart showing how the Northwest Compact would attribute returned radioactive sealed sources (10 CFR 110.2 - exemption 1), as well as foreign sources imported for recycle purposes (10CFR 110.2 – exemption 6). However, the Northwest Compact would provide disposal access, following its useful life, to a foreign manufactured source that is purchased and put to practical use by a generator located within a member state of either the Northwest or Rocky Mountain Compacts.

Thank you for providing the opportunity to comment on the U.S. Nuclear Regulatory Commission's Branch Technical Position on the Import of Non-U.S. Origin Radioactive Sources.

Sincerely,


Mike Garner, Executive Director
Northwest Interstate Compact

Attachment

cc: Northwest Compact Committee

ATTACHMENT

Potential Impacts of Exemptions Provided to Radioactive Sealed Sources by 10 CFR Part 110.2

The U.S. Nuclear Regulatory Commission (NRC) in 10 CFR 110.2 provides six exemptions for materials to the definition of "radioactive waste". The Northwest Compact is concerned with the exemptions provided by exemptions 1 and 6.

10 CFR Part 110.2

Radioactive waste, for the purposes of this part, means any material that contains or is contaminated with source, byproduct, or special nuclear material that by its possession would require a specific radioactive material license in accordance with this Chapter and is imported or exported for the purposes of disposal in a land disposal facility as defined in 10 CFR Part 61, a disposal area as defined in Appendix A to 10 CFR Part 40, or an equivalent facility; or recycling, waste treatment or other waste management process that generates radioactive material for disposal in a land disposal facility as defined in 10 CFR Part 61, a disposal area as defined in Appendix A to 10 CFR Part 40, or an equivalent facility. Radioactive waste does not include radioactive material that is ---

Exemption 1

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 the sealed source;

Exemption 6

Imported solely for the purposes of recycling and not for waste management or disposal where there is a market for the recycled material and evidence of a contract or business agreement can be produced upon request by the NRC.

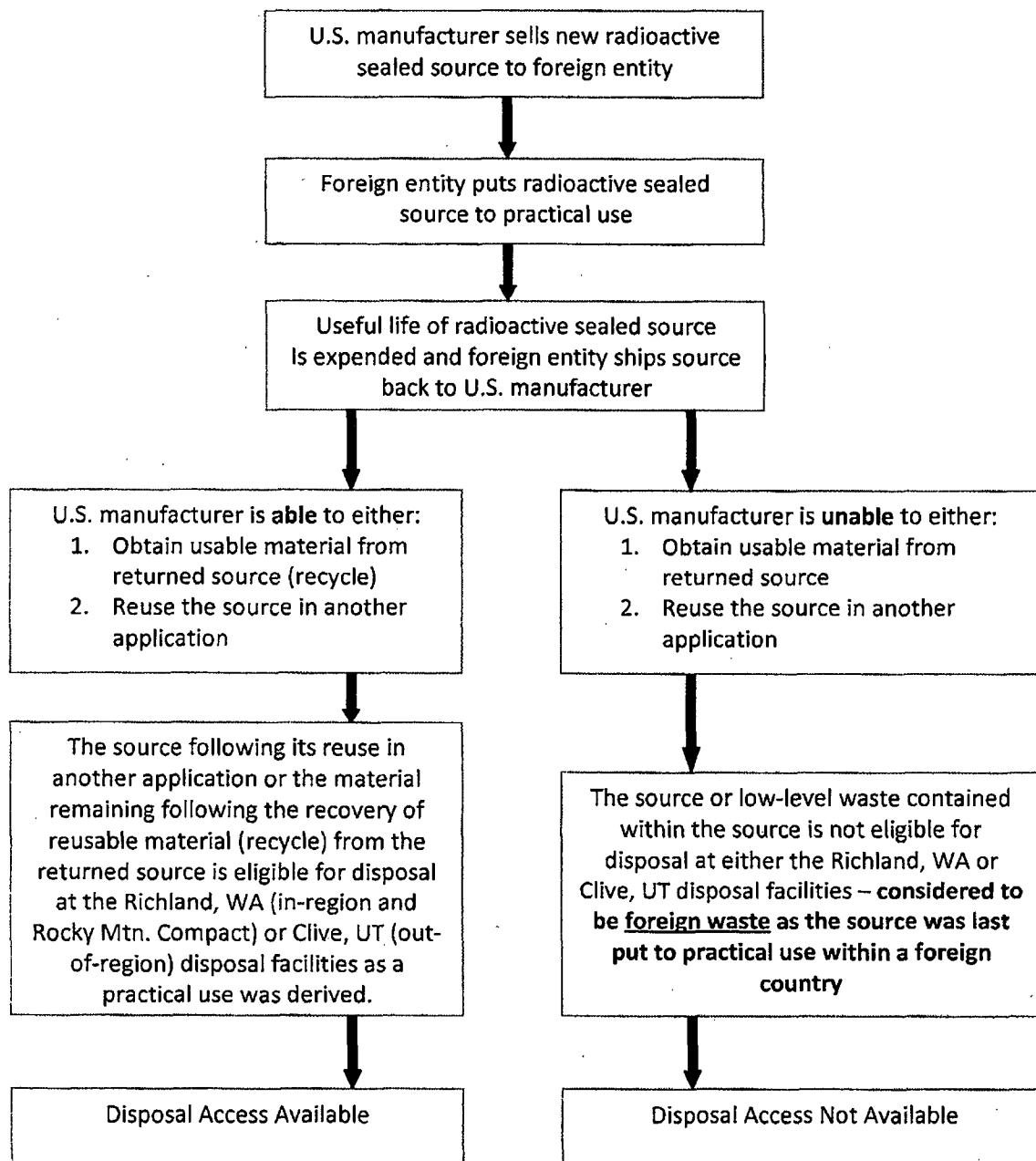
The Low-Level Radioactive Waste Policy Amendments Act provides interstate compacts with operating disposal facilities the authority to deny access to out-of-region low-level radioactive waste effective January 1, 1993. The Northwest Compact exercised its authority to deny access to out-of-region waste on this date.

The compact's Third Amended Resolution and Order serves as an arrangement that provides low-level radioactive waste generated in **states and interstate compacts** located outside the Northwest Compact access to the region for disposal at the Clive, UT facility. The compact's Resolution Clarifying the Third Amended Resolution and Order states that the Third Amended Resolution and Order does not serve as an arrangement that provides foreign low-level radioactive waste access to the region for disposal at the Clive facility.

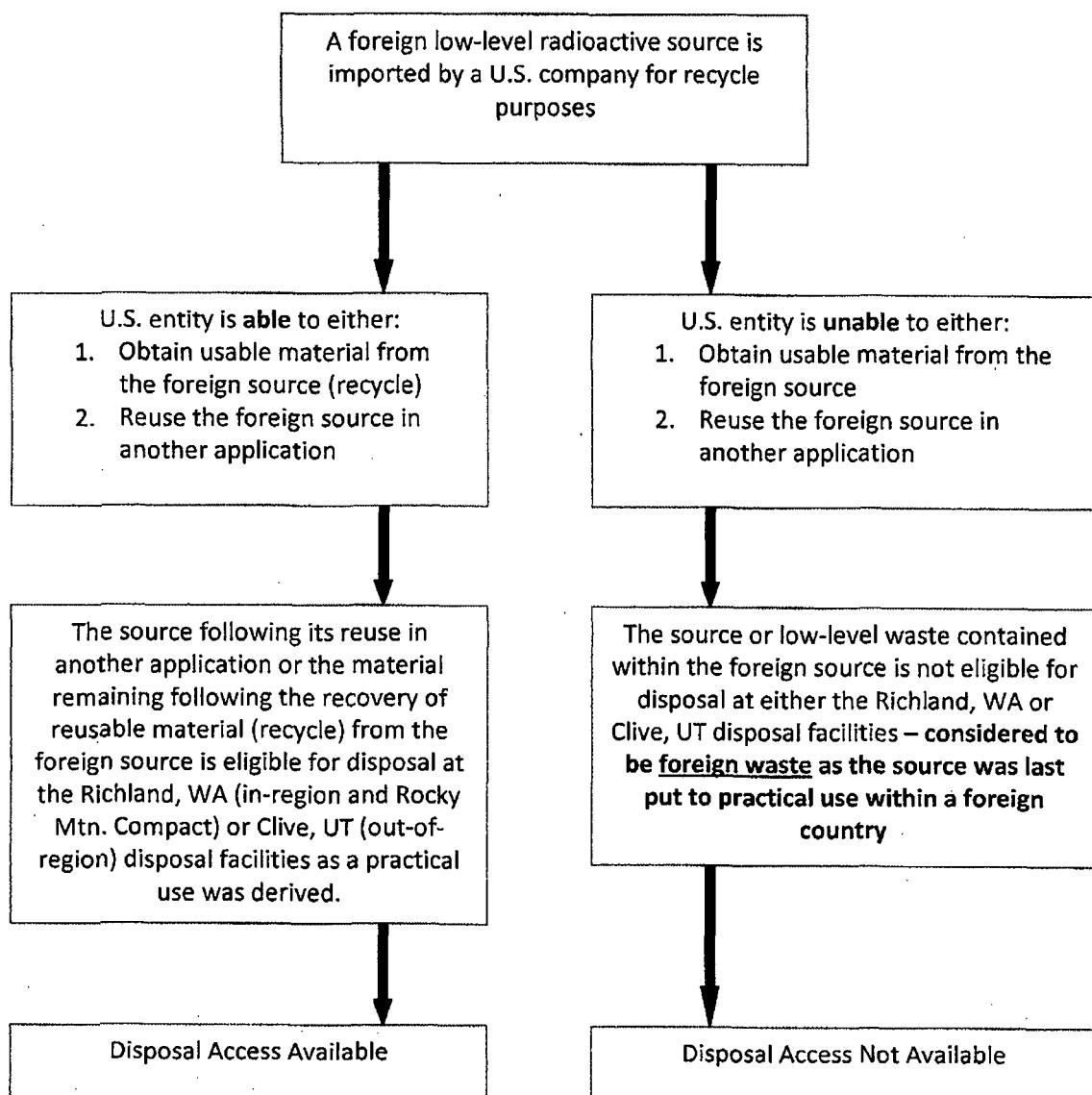
The Northwest Compact determines whether low-level radioactive waste is in-region or out-of-region waste based on the location the radioactive material is last put to practical use. As a result of NRC's above exemptions, situations will occur where these exemptions provide for the shipment of such sources from a foreign entity to a U.S. entity. However, if these sources cannot be put to another practical application once returned or do not yield material that can be reused (recycle), then under the compact's policy these sources would be considered to be **foreign low-level radioactive waste** and would not have access to either the Richland, WA or Clive, UT disposal facilities.

The following two examples show how the Northwest Compact would attribute waste resulting from the return of sources to the U.S. manufacturer or the import of foreign sources for recycle purposes. The examples apply to manufacturers/entities that would normally have access to either the Richland, WA or Clive, UT disposal facilities.

Example 1 – Addresses how the Northwest Compact would attribute a radioactive sealed source that is returned by a foreign entity to the U.S. manufacturer from which it was originally purchased under Exemption 1 of 10 CFR Part 110.2.



Example 2 – Addresses how the Northwest Compact would attribute each foreign radioactive sealed source that is imported by a U.S. entity for recycle purposes under Exemption 6 of 10 CFR Part 110.2.



RulemakingComments Resource

From: Garner, Mike (ECY) [JAMG461@ECY.WA.GOV]
Sent: Friday, December 21, 2012 5:14 PM
To: RulemakingComments Resource
Subject: Northwest Compact's comments on Docket ID NRC-2012-0008
Attachments: 20121221135926372.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.