



SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE COMMISSION

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August 13, 2013

TO: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001,
ATTN: Rulemaking and Adjudications Staff

SUBJECT: Docket ID NRC-2013-0081 Response to NRC Request for Comments
Regarding Policy Statement on Adequacy and Compatibility of Agreement State
Programs and Statements of Principles and Policy for the Agreement State Program

FROM: Mr. Aubrey Godwin, Chairman, Southwestern Low-Level Radioactive Waste
Commission Compact (SWLLRWCC)

Dear Secretary,

Our SWLLRWCC has experienced great difficulty working with the NRC and the CA Agreement State pursuant to the Subject Policy Statements and desires to bring this difficulty to the attention of the two policy Working Groups so that they may evaluate the situation and develop solutions/revisions of the Subject Policy Statements to prevent reoccurrence.


By way of background, the CA Legislature/State enacted Health And Safety code section 115261 in early 2002. On August 20, 2007, this provision was found by NRC to be incompatible with 10 CFR Part 61 (See attached August 20, 2007 NRC letter Robert J. Lewis to Mr. Gary Butner, CA RHB). Initially our Commission repeatedly tried to work with the CA Governor to clean up the incompatibility, but after years of trying our efforts with the Governor was to no avail. Our Commission then shifted its strategy to work with the NRC. This shift in strategy was equally to no avail. (See attached NRC letter dated July 2, 2012 which summarizes our experience with NRC.) Note that this last letter slams the door on any further activity with the NRC. i.e., "further exchanges of correspondence with your organization on the matter are not likely to lead to a different conclusion."

The SWLLRWCC was established by Public Law 100-712 and, pursuant to the authority granted by P.L. 100-712 must do whatever is reasonably necessary to ensure that LLRW are safely disposed of and managed within the region. We are a major stakeholder in the Subject Policy Statement for the Agreement State Program, and yet the NRC seems set on a course of ignoring our concerns and shutting the door to further dialog.

Meanwhile the existence of California's incompatibility issue continues - from early 2002 to the present (11 years) with the likelihood of reaching to at least the 2015 IMPEP year and beyond. For the record, our SWLLRWCC views the execution of the existing Subject Policy Statements as woefully lacking and unresponsive to genuine real world concerns for public safety. For us, years pass without anything coming out of the pipe.

One recommended revision to the Subject Policy Statements is to give organizations like ours the right to formally appeal Subject Policy Statements decisions (or as in this case failure to make decisions) by NRC and Agreement States like CA.

Sincerely,

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

Aubrey Godwin
Chair of the Southwest Low-Level Radioactive Waste Commission Compact

Attachments Enclosed

August 20, 2007

COPY

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) or William Rautzen at 301-415-7206 (e-mail: wrr@nrc.gov).

Sincerely,

IRA Byl

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

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Sincerely,

IRA Byl

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

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DCD (SP03)
Linda McLean, RSAO

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 2, 2012

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

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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.

A. Godwin

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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,



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

cc: Gonzalo Perez, Branch Chief
California Radiologic Health Branch