

SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE COMMISSION

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June 4, 2014

SUBJECT: NRC SRM 13-0075

TO: ANNETTE L. VIETTI-Cook, Secretary
Nuclear Regulatory Commission

Dear Ms. Vietti:

As Chairman of the Southwestern Low-Level Radioactive Waste Commission (Commission), my review of your February 12, 2014 Memorandum to Mr. Mark A. Satorius regarding NRC SRM 13-0075 and the discussion of it at the recent Low-Level Radioactive waste Forum March 17, 2014 Meeting in Austin TX prompts me to write this letter. I'm specifically referring to Note 10 of SRM 13-0075 which states, "10 The staff should develop a specific question for the Federal Register notice that introduces this proposed rule regarding whether the compatibility designations assigned to the various sections of the proposed rule as modified by this SRM are appropriate and solicit comments on whether changes should be considered and for what reason. Although the Commission has assigned Compatibility "B" for the Compliance Period and the Protective Assurance Analysis Period, the staff should specifically solicit comment on that designation...."

Based on the experience of our Commission, NRC will not act to enforce existing compatibility requirements. Assigning compatibility designations to the various sections of the proposed rule is farcical and a waste of time. Our Commission has appealed to the NRC again and again to take action to correct a known A level incompatibility experienced with the State of California's law regarding the disposal of low level waste (see Commission Chairman letter to the Honorable Jaczko, NRC Chairman, dated January 31, 2012, and NRC letter dated August 20, 2007, both included). If NRC isn't going to enforce an A compatibility issue it follows that NRC isn't going to enforce a B compatibility issue either.

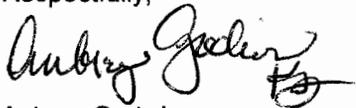
In our extensive correspondence with NRC concerning the safe disposal of low level waste in our region, the NRC staff has taken the position that because they are not aware of any prospective applicant for a LLRW disposal facility license in California, there is no need to enforce the NRC designated A compatibility requirement. However, if one shows up, NRC staff believes they will have ample time to compel California to amend the incompatible language in Health and Safety Code section 115261.

It is the opinion of our Commission that the NRC staff position is correct in the narrowest sense: as the existing statutory language is what is keeping potential applicants from applying, they will never need to enforce the existing incompatibility. The current California law is so chilling; no applicant will expend the funds and energy to apply for a license betting on the possibility that NRC, which heretofore has studiously ignored their responsibility to enforce their own regulations, will compel the California legislature to change their incompatible law. And since there will never be any applicants in the current situation, NRC staff can continue to do nothing forever. This is bureaucratic stonewalling taken to an art form.

If NRC expects their compatibility designations to be taken seriously, they need to take action to enforce them. Ignoring the enforcement of a critical A level compatibility while designating three new B level ones makes the entire system ineffectual and meaningless. If an incompatibility exists now it should be corrected now.

Action is required, not more talk.

Respectfully,

A handwritten signature in black ink, appearing to read "Aubrey Godwin". The signature is fluid and cursive, with a distinct flourish at the end.

Aubrey Godwin
Commission Chairman

Inclusions: Commission Chairman letter to the Honorable Jaczko, NRC Chair, January 31, 2012,
NRC letter, August 20, 2007

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Date January 31, 2012

TO: 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

Honorable Chairman;

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.

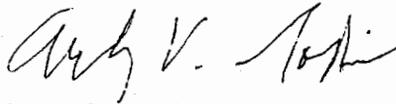
Our Commission has repeatedly asked the Governor of CA to take action to no avail. He wouldn't even answer our letters, an affront that did not go unnoticed by me and the Commissioners from North Dakota and South Dakota given language in our Compact which states: "Each party state may rely on the good 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 a large initial "A" and "G".

Aubrey Godwin, Chairman
Southwestern Low-Level Radioactive Waste Commission

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

August 20, 2007

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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 Linda McLean, RSAO
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Annette L. Vetti Cook, Secretary
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