

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NEW REACTORS
OFFICE OF NUCLEAR REACTOR REGULATION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, DC 20555-0001

November 13, 2016

**NRC REGULATORY ISSUE SUMMARY 2016-11
REQUESTS TO DISPOSE OF VERY LOW-LEVEL RADIOACTIVE WASTE
PURSUANT TO 10 CFR 20.2002**

ADDRESSEES

All NRC licensees. All Agreement State Radiation Control Program Directors and State Liaison Officers.

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this Regulatory Issue Summary (RIS) to correct the information provided in Information Notice (IN) 1986-90, "Requests to Dispose of Very Low-Level Radioactive Waste Pursuant to 10 CFR 20.302." This RIS clarifies the application process for obtaining approvals to dispose of low-level waste (LLW) in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 20.2002 regulations, or equivalent Agreement State regulations.

The NRC expects recipients to review the information for applicability to their facilities and to consider actions, as appropriate. However, this RIS requires no specific action or written response on the part of an addressee. The NRC is providing this RIS to the Agreement States for their information and distribution to their licensees as appropriate. This RIS supersedes Information Notice (IN) 1986-90.

BACKGROUND INFORMATION

On November 3, 1986, the NRC issued IN 1986-90, "Requests to Dispose of Very Low-Level Radioactive Waste Pursuant to 10 CFR 20.302," to inform nuclear reactor licensees of the authority of Agreement States in reviewing and approving requests to dispose of low-level radioactive waste pursuant to 10 CFR 20.302 (now 10 CFR 20.2002¹). IN 1986-90 incorrectly stated that in cases where a nuclear reactor facility is located in an Agreement State, the NRC does not have the legal basis for performing the reviews and granting approvals. The NRC performed a regulatory review of the 10 CFR 20.2002 process and determined that IN 1986-90 did not provide the correct information regarding regulatory approval to dispose of very low-level waste. The NRC issued an official clarification of the process to Agreement State regulators on March 13, 2012, entitled, "Clarification of the Authorization for Alternate Disposal of Material Issued Under 10 CFR 20.2002 and Exemption Provisions in 10 CFR (FSME-12-025)." This letter was issued to clarify the use of 10 CFR 20.2002 and similar Agreement State processes

¹ 10 CFR 20.2002 replaced 10 CFR 20.302 on May 21, 1991 (56 FR 23403).

for the disposal of radioactive materials in Resource Conservation Recovery Act disposal facilities or other unlicensed facilities when the unlicensed facility is located in another State. This clarification confirmed that an Agreement State would need to provide an exemption under its 10 CFR 20.2002-equivalent State regulations to a licensee seeking to dispose of waste at a facility in another State. The Agreement State where the facility is located, or the NRC in the case of non-Agreement State facilities, would need to license or exempt the unlicensed facility accepting the waste. This "All Agreement States" letter is accessible to the public in NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML12065A038.

SUMMARY OF ISSUE

NRC regulations in 10 CFR 20.2002 provide that a licensee or applicant for a license may apply to the Commission for approval of procedures to dispose of licensed material not otherwise authorized in 10 CFR Part 20 for disposal. Licensees have used 10 CFR 20.2002 to dispose of very LLW on a site-specific basis. This RIS makes the clarification that any licensee's request for approval to dispose of licensed material under 10 CFR 20.2002, or the equivalent Agreement State regulations, must be submitted to the regulatory authority that issued the license for use of the radioactive material. For licensees under 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," or Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," this request should be made to the NRC in accordance with 10 CFR 50.4, "Written Communications" or 10 CFR 52.3, "Written Communications." For NRC-issued licenses under 10 CFR Parts 30 ("Rules of General Applicability to Domestic Licensing of Byproduct Material"), 40 ("Domestic Licensing of Source Material"), and 70 ("Domestic Licensing of Special Nuclear Material"), the request should be made in accordance with 10 CFR 30.6, 10 CFR 40.5, or 10 CFR 70.5, "Communications." For Agreement State licensees, this request should be made directly to the Agreement State regulatory authority. If the Agreement State has not adopted regulations equivalent to 10 CFR 20.2002, then the State may accomplish the same regulatory authorization through application of its specific exemption authority, which could approve the request to dispose of licensed material using procedures not otherwise authorized. Also, radioactive material licensees receiving a 10 CFR 20.2002 approval must follow other permitting requirements.

Details related to exemption request requirements and the involvement of the NRC and Agreement States are discussed in FSME-12-025, "Clarification of the Authorization for Alternate Disposal of Material Issued under 10 CFR 20.2002 and Exemption Provisions in 10 CFR." These details include a discussion of several situations where the NRC and an Agreement State or multiple Agreement States would be involved in reviewing requests for and authorizing alternate procedures to dispose of licensed material under 10 CFR 20.2002 (or the equivalent Agreement States regulations).

Unlicensed disposal (or other) facilities that intend to take possession of licensed material must either obtain a license or an exemption from the requirement to have a license to possess the material. In Agreement States, this license or exemption must be obtained from the regulatory authority in the Agreement State. In non-Agreement States, the license or exemption must be obtained from the NRC. NRC staff practice is to issue an exemption from the requirement for a license for possession of the radioactive material to the facility intended to take possession of the material in conjunction with issuance of the 10 CFR 20.2002 authorization to the licensee disposing of the material.

In some cases, the involvement of the NRC or Agreement State may not be required because the licensed materials may be exempt from NRC or Agreement State licensing requirements. In this case, the unlicensed facility does not need a specific exemption or license to dispose of the material. For example, items meeting the criteria in 10 CFR 30.15, "Certain items containing byproduct material," would not require a license or an exemption from either the NRC or the Agreement State.

Also, a source material licensee may transfer or dispose of unimportant quantities² of source material under the regulations of 10 CFR 40.51(b)(3) and (4) to persons exempt under 10 CFR 40.13(a). Licensees are not required to request and receive NRC approval for these transfers. However, if requested, NRC staff will, on a case-by-case basis, review and approve such transfers. Additional information on NRC staff reviews of requests to transfer material under 10 CFR 40.51(b)(3) and (4) to persons exempt under 10 CFR 40.13(a) can be found in an Office of Nuclear Material Safety and Safeguards (NMSS) procedure, "Review, Approval, and Documentation of Low-Activity Waste Disposals in Accordance with 10 CFR 20.2002 and 10 CFR 40.13(a)" (ADAMS Accession No. ML092460058). If licensees have questions related to the necessity of a 10 CFR 20.2002 exemption with regard to disposing exempt materials, they can contact the NRC or Agreement State for clarification.

BACKFITTING THE ISSUE AND FINALITY DISCUSSION

This RIS requires no action or written response. Any action that licensees take to implement changes or procedures in accordance with the information contained in this RIS ensures compliance with current regulations, is strictly voluntary, and, therefore, is not a backfit under any of the backfitting provisions contained in 10 CFR 50.109, 70.76, 72.62, 76.76, or the issue finality provision of 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants." Consequently, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was not published in the *Federal Register* because it is informational and pertains to a staff position that does not represent a departure from current regulatory requirements and practice.

CONGRESSIONAL REVIEW ACT

This RIS is not a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808).

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), approval numbers 3150-0009, 3150-0011, 3150-0014, 3150-0017, 3150-0020, and 3150-0151.

² There have been cases where licensees decontaminate material to exempt concentration levels as defined in 10 CFR 30.70, "Exempt Concentrations."

PUBLIC PROTECTION NOTIFICATION

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CONTACTS

This RIS requires no specific action, or written response. If you have any questions about this summary, please contact the technical contacts listed below or the appropriate regional office.

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Note: NRC generic communications may be found on the NRC public Web site,
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ADAMS Accession No. ML16007A488

*via email

OFC	NMSS/MSTR/ASPB	NMSS/MSTR/ASPB	*NMSS/MSTR/MSEB	*NMSS/FCSE	*NRR/DRA/ARCB/BC
NAME	SPoy	PMichalak	AMcIntosh	KRamsey	UShoop
DATE	1/20/16	1/27/16	9/11/15	1/05/16	3/14/16
OFC	*QTE	*OCIO	*OGC (NLO)	NMSS/DUWP/D	*NMSS/DSFM/D
NAME	CHsu	DCullison	OMikula	JTappert	MLombard
DATE	1/08/16	4/04/16	10/20/16	5/5/16	9/19/16
OFC	*NRO/DSEA/RPAC/BC	*NRO/DCIP/D	*NRR/DPR/PGCB/LA	*NRR/DPR/PGCB/BC	NRR/DPR/D
NAME	LBurkhart	MCheck	ELee (ABaxter for)	SStuchell	LLund
DATE	08/02/16	10/06/16	09/27/16	10/06/16	10/21/16
OFC	NMSS/MSTR/D				
NAME	PHenderson for DCollins				
DATE	11/13/16				

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