

PUBLIC SUBMISSION

As of: 5/17/18 3:12 PM
Received: May 15, 2018
Status: Pending Post
Tracking No. 1k2-935t-anc2
Comments Due: May 15, 2018
Submission Type: Web

Docket: NRC-2018-0026
Very Low-Level Radioactive Waste Scoping Study

Comment On: NRC-2018-0026-0001
Very Low-Level Radioactive Waste Scoping Study

Document: NRC-2018-0026-DRAFT-0021
Comment on FR Doc # 2018-03083

Submitter Information

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General Comment

See attached file(s)

DOCKET ID: NRC-2018-0026

RE: ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE COMPACT COMMENTS IN
RESPONSE TO NRC PLANS TO CONDUCT A VERY LOW-LEVEL RADIOACTIVE WASTE (VLLW)
SCOPING STUDY

See attached file.

Attachments

Rocky Mountain Compact May 2018 VLLRW Comments

SUNSI Review Complete
Template = ADM-013
E-RIDS=ADM-03
ADD= Kellee Jamerson

COMMENT #21
PUBICATION DATE:
2/14/2018
CITATION # 83 FR 6619

Rocky Mountain Low-Level Radioactive Waste Board

Member States: Colorado, Nevada, and New Mexico

Leonard C. Slasky * Executive Director

April 30, 2018

Docket ID: NRC-2018-0026

Re: RMLLW COMPACT COMMENTS IN RESPONSE TO NRC PLANS
TO CONDUCT A VERY LOW-LEVEL RADIOACTIVE WASTE
(VLLW) SCOPING STUDY

INTRODUCTION:

The Rocky Mountain Low-Level Radioactive Waste Compact (RMLLW Compact) is one of ten interstate compacts with the authority to regulate the import and export of low-level radioactive waste (LLW) to and from the compacts. The RMLLW Compact region is comprised of Colorado, New Mexico, and Nevada.

Together with other compacts, the RMLLW Compact received Congressional Consent by the *Omnibus Low-level Radioactive Waste Interstate Compact Consent Act*, Pub. L. No. 99 – 240.¹ As is the case for the other compacts, Congressional authorization of the RMLLW Compact converted an agreement among states into federal law. See *New York v. United States*, 505 U.S. 144 (1992).

DISCUSSION:

The RMLLW Compact Board (Board) understands that NRC is seeking comments on its Very Low-Level Radioactive Waste (VLLW) Scoping Study to change its regulatory framework for the disposal of large volumes of VLLW from decommissioning of nuclear power plants and other sources. The Board is primarily interested in this process because of the confusion engendered by NRC jurisdiction and compact jurisdiction over LLW. The Board hopes that

¹ The Consent Act is Title II of US Public Law 99-240. Title I is the *Low-Level Radioactive Waste Policy Amendments of 1985*.

whatever regulatory changes might emerge from NRC's process will include an adequate discussion of LLW compact authorities and requirements to avoid as much confusion as possible on the part of regulators, the regulated community, and the public.

Following is a brief summary of the RMLLW Compact authority over LLW.

RMLLW Board Authority over LLW

1. Definition of LLW. The RMLLW Compact regulates the import and export of "low-level waste" to and from the Compact region. Low-level waste is defined in Article II of the Compact to be radioactive waste *other than five excluded types of waste such as high-level waste.*

The Compact statute does not exclude from regulation any low-level waste regardless of concentration.

2. Exclusionary Authority of the RMLLW Compact. The RMLLW Compact requires, among other things, that the Board authorize any import of waste into the RMLLW Compact region. The Compact provides that "it shall be unlawful for any person to dispose of low-level waste within the region, except at a regional facility. . ." RMLLW Compact, Art. VII (a).

Further, "it is unlawful for any person to manage low-level waste within the region unless the waste was generated within the region or unless authorized to do so by the Board and the state in which said management takes place." *Id.* at VII(c).

The term "management" is defined as "collection, consolidation, storage, treatment, incineration or disposal." *Id.* at II(h).

3. Compact Jurisdiction over VLLW

All VLLW would fall within the RMLLW definition of LLW, and thus would be subject to RMLLW Compact authority.

The Board understands that the NRC may be considering lower regulatory requirements for VLLW including certain wastes resulting from decommissioning of nuclear reactors. It is important to point out that any such VLLW could not be imported into the RMLLW Compact region without authorization from the Board. At the present time, there is no facility authorized by the Compact to accept out-of-region LLW other than the Clean Harbors facility, which is limited to NORM/TENORM within certain concentration limits.

4. Effect on Regional Compacts of Defining VLLW

The Federal Register notice requested comments on several specific issues including:

If the NRC were to create a new waste category for VLLW, does it fall within regional compact authority to control VLLW management and disposal? How

might defining VLLW affect regional compacts in terms of additional responsibilities or resources?

Following are responses to these questions.

Because the LLW regional compacts are federal law, any regulatory change to waste categories would not change compact authority and responsibilities over LLW. The universe of LLW regulated by each compact is defined by the language of the compact. Thus, any new category of LLW waste would continue to be regulated by the Compact.

The most likely impact on compact responsibilities and resources will be trying to minimize confusion regarding the effect of NRC regulatory changes on compact authority. As mentioned above, the NRC can help to minimize confusion by a preface to its rule that spells out the authority of each compact over VLLW. It is important for the regulated community to understand that even if a facility is permitted to dispose of VLLW, if the facility is within a LLW compact, that compact has sole and absolute discretion whether or not to allow the import of VLLW.

As all compacts have the authority to regulate, or even prohibit, the import of LLW, as defined in the respective compact, and since there are Resource Conservation and Recovery Act facilities in most, if not all, compacts that could be authorized to dispose of VLLW, greater compact resources could be required to evaluate import applications and potentially authorize and track the import of VLLW.

FOR THE ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE BOARD



Leonard Slosky
Executive Director

LCS/em

cc: Board Members