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# PUBLIC SUBMISSION

**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-0027  
Comment on FR Doc # 2018-03083

**SUNSI Review Complete**  
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**ADD= Kellee Jamerson**

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## Submitter Information

**Name:** Anonymous Anonymous  
**Submitter's Representative:** Todd D. Lovinger, Esq.  
**Organization:** Low-Level Radioactive Waste Forum

**COMMENT (#27)**  
**PUBICATION DATE:**  
**2/14/2018**  
**CITATION # 83 FR 6619**

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## General Comment

The Low-Level Radioactive Waste Forum (LLW Forum) is a non-profit organization of representatives appointed by Governors and compact commissions that seeks to facilitate state and compact implementation of the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments, as well as to promote the objectives of regional low-level radioactive waste disposal compacts.

The LLW Forums Board of Directors is comprised of representatives from all ten operating low-level radioactive waste compacts; states that have an operating low-level radioactive waste disposal facility or that have been designated by a compact as a host state for a new disposal facility; and, states that are not affiliated with a compact (unaffiliated states).

The LLW Forum notified the compacts and states, as well as other stakeholders, of the publication of the Federal Register notice on the Very Low-Level Waste (VLLW) scoping study and encouraged all interested parties to consider the issues and develop responses to the questions posed.

In an effort to assist the NRC, the LLW Forum collected and consolidated the attached comments from the compacts and states. (See attached.) Given the time constraints and complexity of the issues, however, the LLW Forums Board of Directors did not have an opportunity to review, discuss and develop a uniform and consistent approach to all of the questions posed.

Accordingly, the attached responses should only be considered to represent a compilation of comments

submitted by individual compacts and states. The responses, which may at times present different perspectives on some of the underlying issues, are therefore not intended to present a uniform position of the LLW Forum. Rather, they provide a collection of feedback and guidance from individual compacts and states, which have primary authority with regard to low-level radioactive waste management and disposal.

On behalf of the LLW Forum, we appreciate the opportunity to provide input and feedback on the VLLW scoping study. We look forward to our continued participation as NRC proceeds with the process and encourage agency staff to communicate with the compacts and states given their significant role and responsibilities.

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## **Attachments**

LLW Forum Comments re VLLW Scoping Study FINAL 5.15.18

# LOW-LEVEL RADIOACTIVE WASTE FORUM, INC.

2657 Bayview Drive – Ft. Lauderdale, FL 33306  
(754) 779-7551 \* (754) 223-7452 FAX

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May 15, 2018

May Ma  
Office of Administration  
Mail Stop OWFN-2-A13  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**RE: Request for Comments on the Very Low-Level Radioactive Waste Scoping Study as Published at 83 *Federal Register* 6,619 Docket ID NRC-2018-0026**

Dear May Ma:

The Low-Level Radioactive Waste Forum (LLW Forum) is a non-profit organization of representatives appointed by Governors and compact commissions that seeks to facilitate state and compact implementation of the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments, as well as to promote the objectives of regional low-level radioactive waste disposal compacts.

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## Request for Comments re Very Low-Level Radioactive Waste Scoping Study

On February 14, 2018, the U.S. Nuclear Regulatory Commission (NRC) published a *Federal Register* notice announcing the agency's plans to conduct a very low-level radioactive waste (VLLW) scoping study to identify possible options to improve and strengthen the NRC's regulatory framework for the disposal of the anticipated large

volumes of VLLW associated with the decommissioning of nuclear power plants and material sites, as well as waste that might be generated by alternative waste streams that may be created by operating reprocessing facilities or a radiological event. (See 83 *Federal Register* 6,619 dated February 14, 2018.)

As part of the process, the NRC is seeking stakeholder input and perspectives. Respondents are asked to consider specific questions posed by the NRC staff and other federal agencies in the *Federal Register* notice.

Compact and State Comments re Very Low-Level Radioactive Waste Scoping Study

The LLW Forum notified the compacts and states, as well as other stakeholders, of the publication of the *Federal Register* notice on the VLLW scoping study and encouraged all interested parties to consider the issues and develop responses to the questions posed.

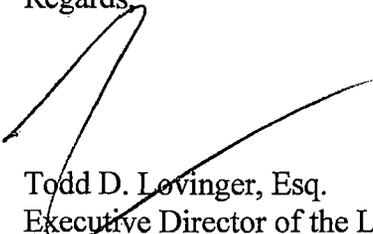
In an effort to assist the NRC, the LLW Forum collected and consolidated the attached comments from the compacts and states. Given the time constraints and complexity of the issues, however, the LLW Forum's Board of Directors did not have an opportunity to review, discuss and develop a uniform and consistent approach to all of the questions posed.

Accordingly, the attached responses should only be considered to represent a compilation of comments submitted by individual compacts and states. The responses, which may at times present different perspectives on some of the underlying issues, are therefore not intended to present a uniform position of the LLW Forum. Rather, they provide a collection of feedback and guidance from individual compacts and states, which have primary authority with regard to low-level radioactive waste management and disposal.

On behalf of the LLW Forum, we appreciate the opportunity to provide input and feedback on the VLLW scoping study. We look forward to our continued participation as NRC proceeds with the process and encourage agency staff to communicate with the compacts and states given their significant role and responsibilities.

Please feel free to contact me at (754) 779-7551 or at [LLWForumInc@aol.com](mailto:LLWForumInc@aol.com) if you have questions or require additional information.

Regards,



Todd D. Lovinger, Esq.  
Executive Director of the LLW Forum, Inc.  
Project Director for the Disused Sources and Part 61 Working Groups

cc: LLW Forum Board of Directors

## Compilation of Comments from Individual Compacts and States in Response to NRC Questions re VLLW Scoping Study

### *Regulatory Definition*

*Question 1: The United States does not have a formal regulatory definition of VLLW. What should the NRC consider in developing its own regulatory definition for VLLW? Is there another definition of VLLW that should be considered? Please provide a basis for your response.*

*Question 2: The existing regulatory framework within 10 CFR 61.55 divides low-level radioactive waste into four categories: Class A, Class B, Class C, and GTCC. Should the NRC revise the waste classification system to establish a new category for VLLW? What criteria should NRC consider in establishing the boundary between Class A and VLLW categories?*

- In determining whether or not to develop a regulatory definition for VLLW, NRC should review the current IAEA definition of VLLW for benchmarking purposes. If NRC decides to proceed, a VLLW definition should consider a threshold — preferably a concentration based limit for the waste constituents) — that would clearly distinguish VLLW from low-level radioactive waste.
- If NRC establishes a new category for VLLW, it should fall under the existing regulatory framework of 10 CFR 61.55 and as an additional category for the waste classification system.
- One of the primary basis for creating a new regulatory definition for VLLW is to bring added consistency and greater regulatory alignment with existing international waste categorization systems — resulting in less regulatory confusion and increased waste management certainty. However, from a more domestic perspective, creating a VLLW category will likely cause a significant impact to existing compacts and their economic viability due to the potential loss of such a large volume of waste that would fall under the definition of VLLW and could otherwise be disposed in a RCRA-regulated disposal facility.

### *Alternative Disposal Guidance*

*Question 3: The NRC's alternative disposal request guidance entitled, "Review, Approval, and Documentation of Low- Activity Waste Disposals in Accordance with 10 CFR 20.2002 and 10 CFR 40.13(a)," which is undergoing a revision, allows for alternative disposal methods that are different from those already defined in the regulations and is most often used for burial of waste in hazardous or solid waste*

*landfills permitted under the Resource Conservation and Recovery Act (RCRA). Should the NRC expand the existing guidance to include VLLW disposal or consider the development of a new guidance for VLLW disposal? Why or why not?*

- The NRC should expand the “revised” alternative disposal request guidance to include VLLW disposal. The industry and the regulatory agencies (NRC and Agreement States) have gained experience with the existing process, and the current analytical tools are adequate enough to assess the risk of disposing of VLLW.

### ***Compatibility Issues***

*Question 4: If the NRC were to create a new waste category for VLLW in 10 CFR Part 61, what potential compatibility issues related to the approval of VLLW disposal by NRC Agreement States need to be considered and addressed? How might defining VLLW affect NRC Agreement State regulatory programs in terms of additional responsibilities or resources?*

- The Agreement States should be allowed to decide whether or not to adopt the new definition for VLLW. There will be additional work for the Agreement States associated with the review of licensee submittals for disposal of VLLW. This would require additional resources and could increase the cost of maintaining a regulatory program.

### ***Compact Authority***

*Question 5: Following the Low-Level Radioactive Waste Policy Amendments Act of 1985, states formed regional compacts for the disposal of low-level radioactive waste. 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?*

- Because the low-level radioactive waste regional compacts are federal law, any regulatory change to waste categories would not change compact authority and responsibilities over low-level radioactive waste. The language of each individual compact defines the universe of low-level radioactive waste that falls under that compact’s regulatory authority. Thus, any new category of low-level radioactive waste may continue to be regulated by individual compacts based upon their specific compact language.

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. The NRC can help to minimize confusion by including 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 low-level radioactive waste 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 low-level radioactive waste as defined in each respective compact. Since there are Resource Conservation and Recovery Act (RCRA) 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.

- Regardless of the suggested designation of VLLW as the bottom 10% of the Class A limits (in 61.55), it would still constitute Part 61 material and be susceptible to compact control. Additional resources and responsibilities may result if a separate disposal facility is sited. Before any such facility is authorized for construction or use, the compact would need to specifically authorize it.
- If a new waste category for VLLW is created, the new category would still fall within the definition of low-level radioactive waste as envisioned by the Low-Level Radioactive Waste Policy Act (LLRWPA) and therefore would be subject to a compact's authority and control. As such, additional resources may be necessary in order to ensure such waste is properly categorized and meets the waste acceptance criteria of the receiving disposal facility. In terms of low-level radioactive waste that is exported out of a compact, those compacts that have instituted specific requirements (technical as well as financial) regarding waste exports will likely realize an increase in resources in order to ensure that VLLW exports, as a newly defined category of low-level radioactive waste, complies with all export requirements. While such waste is now typically considered Class A low-level radioactive waste, creating a new category for VLLW would undoubtedly result in added administrative costs/controls and oversight activities.
- This would require a legal review by each of the ten individual low-level radioactive waste compacts. NRC is encouraged to seek input from each of the compacts on whether the new category would fall within their individual regional compact authority to control management and disposal.

### ***Unintended Consequences and Economic Considerations***

*Question 7: Are there any unintended consequences associated with developing a VLLW waste category?*

*Question 9: How should economic factors be considered in the VLLW scoping study?*

- The establishment of a VLLW category has consequences. In particular, it could have the unintended impact of significantly increasing disposal prices for low-level radioactive waste that does not fall into the new VLLW category due to a variety of

considerations including rate regulation, economic viability of existing low-level radioactive waste disposal sites, etc.

- The NRC should consider the impact on the existing low-level radioactive waste disposal facilities associated with the development of a new category for VLLW. Would these facilities continue to be economically viable absent the projected disposal volume of VLLW?
- An important factor to consider would be the potential economic impact on the existing commercial low-level radioactive waste disposal facilities due to the creation of a new waste category for VLLW. This should include a projection of the volume of waste that would fall under the new VLLW category. The cost benefit analysis (CBA) associated with this proposal should also be considered in the VLLW scoping study.
- In regard to unintended consequences associated with developing a VLLW category, it is important to consider the economic viability of compacts as well as implementation issues associated with specific import and export requirements, including the potential for some compacts to develop new export (or revise existing) fees or other requirements.
- Economic factors that should be considered in the VLLW scoping study include the overall viability of compacts with a compact-by-compact analysis to account for both import and export considerations and legal requirements specific or unique to each compact.