

LOW-LEVEL RADIOACTIVE WASTE FORUM, INC.

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The Honorable Dale Klein
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Chairman Klein:

On behalf of the Low-Level Radioactive Waste Forum, Inc. (LLW Forum), I would like to take this opportunity to thank you and the Commissioners for inviting us to participate in the agency's low-level radioactive waste briefing on April 17, 2009. We found the meeting to be both interesting and informative and appreciated the opportunity to share our views on this important issue directly with the Commissioners.

There were two items that arose during the briefing, however, on which I wanted to follow-up and provide both you and the Commissioners with some additional information and explanation—the exercise of compact authority and waste attribution.

Exercise of Compact Authority

The first issue concerns Commissioner's Lyon's question as to whether or not generators that are located in a region that hosts a compact facility are compelled to use that facility exclusively and prevented from using out-of-compact facilities or alternative options. Although the speaker answered in the affirmative, this is not completely correct.

In the first place, while it is true that the compact of origin has the legal authority to require regional generators to use a disposal facility in its region, the decision whether or not to do so is discretionary on the part of the governing compact. As an example, the Atlantic Compact does not require its generators to use the Barnwell facility exclusively and, as a result, most Atlantic Compact generators choose to send their Class A waste to the Clive facility in Utah.

Moreover, although the Northwest Compact does require regional generators to dispose of their (non-mixed) low-level radioactive waste at the Richland facility, there is important rationale for doing so. First, this requirement is intended to ensure that the operator recovers its costs allowing the Richland facility to remain economically viable. Second, this requirement allows disposal fees to be maintained at the lowest possible cost for regional generators. Without such a restriction, regional generators may choose to ship their LLW elsewhere for a short-term savings. If this were to occur, disposal fees for regional generators continuing to use the Richland facility would have to be increased, or the facility would close, as there would be insufficient revenue to support operation of the facility.

The question raises an important issue that has been highlighted by the LLW Forum repeatedly over the years—namely, that unintended consequences need to be taken into account when considering alternatives. As we all know, waste disposal facilities are expensive to site, license, and operate. As a result, if lower cost options are sought for certain waste streams—such as low-activity waste—the lost revenue will need to be made up in other ways, likely through higher disposal costs charged for other waste streams.

Indeed, the Atlantic Compact's policy is instructional here. Although the compact does not require regional generators to send waste to the Barnwell facility and allows waste to be exported out-of-region to the Clive facility, both the Atlantic Compact and the State of South Carolina have made clear that regional generators will have to make up any shortfall in operating costs of the Barnwell facility due to reduced waste streams in order for the facility to remain open and operational. The unfortunate alternative, which I believe we all want to avoid, would be the complete closure of the facility to all waste.

In addition, at this time, all of the compacts allow generators access to all treatment facilities across the nation. However, some compacts require waste export permits prior to exporting waste for treatment or disposal outside the compact of origin.

Waste Attribution

The other issue upon which we wanted to provide additional commentary relates to the question as to why the Northwest Compact is concerned with the State of Tennessee allowing its processors to manifest waste from out-of-state generators as their own when sending the waste on for disposal.

First, the issue highlights the need to maintain a paper trail of the original waste generator—a federal requirement that is imposed for various important reasons. Indeed, federal manifesting regulations were put into place in order to track the original generator should questions arise regarding the type or class of waste, liability, or other issues of concern.

Second, the need to properly designate the generator of the waste is vital to maintaining agreements and good relations with the host community—an issue that Commissioner Jaczko has highlighted in many of his presentations. Indeed, often the host community

for a facility is limited in its willingness to accept only certain waste streams from certain generators. Subverting that process would likely create a sense of mistrust and could impact the long-term viability of these facilities. As an example, we note that Utah residents are supportive of Clive accepting Class A waste, but not of the disposal of Class B and C waste at the facility. Although the state regulatory agency has determined that the waste could be disposed safely at the facility, it is important to respect the limits of the local community in order to maintain local community support for the facility.

Lastly, if waste processors are allowed to attribute treated waste to themselves, there is a concern that processors within sited compacts could take in waste from other compacts that do not have access to the compact disposal facility and then attempt to dispose of waste as if it was waste from that compact.

Conclusion

On behalf of the LLW Forum, we once again express our appreciation for the opportunity to participate in the briefing and to provide this additional input on the referenced issues. Although we recognize that there are important issues that still need to be worked upon and certain limited waste streams for which we still need to develop disposal capacity, we note that the great majority of low-level radioactive waste in the United States has disposal access and that, most importantly, all of it is being managed safely with regard to public health and the environment.

As the State of Texas is in the final stages of siting a new regional compact facility under the Low-Level Radioactive Waste Policy Act, we believe that this is an exciting and crucial time in the process and it is important that all interested stakeholders have all of the facts and allow the process to play out to what we anticipate will be a successful conclusion. In this regard, it is important to consider potential unintended consequences when dealing with this complex issue. Indeed, most (if not all) of the alternative options that have been suggested could unintentionally result in the closure of existing facilities, which would severely stifle low-level radioactive waste management in this country.

The LLW Forum would like to formally request that you share this letter with all of the NRC Commissioners and include it in the written record for the briefing in order to clarify these important issues.

Again, thank you for the opportunity to participate in the briefing and to provide additional input on these limited issues.

Sincerely,

Todd D. Lovinger, Esq.
Executive Director
LLW Forum, Inc.