

NRCREP - Response of Cal Rad Forum to Request for Comments FR/Vol.71, No. 130/July 7, 2006

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Subject: Response of Cal Rad Forum to Request for Comments FR/Vol.71, No. 130/July 7, 2006

Attached is the response of the California Radioactive materials Management Forum (Cal Rad) to the NRC's "Request for Comments on the Nuclear Regulatory Commission's Low Level Radioactive Waste Program." Federal Register / Vol. 71, No. 130 / July 7, 2006.

A signed version of our response will follow by mail.

Alan Pasternak, Ph.D.
 Technical Director
 Cal Rad Forum
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Response to: Request for Comments on the Nuclear Regulatory Commission's Low Level Radioactive Waste Program. Federal Register / Vol. 71, No. 130 / July 7, 2006.

The attached comments are submitted on behalf of the California Radioactive Materials Management Forum (Cal Rad Forum). Cal Rad Forum is an association of public and private organizations that use radioactive materials in the four states of the Southwestern Compact region: California (Host State), Arizona, North Dakota, and South Dakota. Our members include universities, electric utilities with nuclear power plants, industries including biotechnical and pharmaceutical companies, medical centers, and local sections of professional societies.

We appreciate the opportunities to participate in the Advisory Committee on Nuclear Waste's workshop on May 24 at NRC headquarters and to submit these written comments.

Cal Rad would be happy to respond to any questions concerning the attached comments or to provide further information.

Sincerely,

Alan Pasternak
Technical Director

cc: Cal Rad Forum Corporate and Institutional Members
Cal Rad Forum Board of Directors

Visit our Web Site: <http://www.calradforum.org>

August 31, 2006

**Response of The California Radioactive Materials Management Forum to NRC's
"Request for Comments on the Nuclear Regulatory Commission's Low Level
Radioactive Waste Program." Federal Register / Vol 71, No. 130 / July 7, 2006.**

What are your key safety and cost drivers and/or concerns relative to LLW disposal?

Cal Rad Forum's overriding concern is lack of assured access to disposal facilities for low-level radioactive waste (LLRW) Classes B and C and some of Class A. Another concern is lack of a competitive pricing environment for disposal of those categories of Class A waste for which there may be access to disposal. Organizations affected are public and private corporations and institutions and all federal and state government agencies, except the U.S. Department of Energy, that use radioactive materials in thirty-four to thirty-six states, the District of Columbia, and Puerto Rico.

The interstate compact framework for LLRW disposal under the Low-Level Waste Policy Act (P.L. 99-240) has failed to produce a single new disposal facility. Because of existing federal and state laws and the fragile status of the compact framework, organizations that use radioactive materials in thirty-four to thirty-six states will have no place to dispose of their Class B and C LLRW as of July 1, 2008 when access to the Barnwell, SC disposal facility will be restricted to the three member states of the Atlantic Compact: South Carolina, New Jersey, and Connecticut. At the same time, there will be only one facility — EnergySolutions in Clive, Utah — to which these organizations will be able to send Class A waste, not including sealed sources or biological materials. This is not the outcome envisioned when the Policy Act was passed in 1980 or when it was amended in 1985. The only states with assured access are the member states of the Northwest, Rocky Mountain, and Atlantic Compacts. Texas is the only state with an active program to develop a new disposal facility (Texas and Vermont Compact).

Can the Future Be Altered?

Yes. According to a Department of Energy Inspector General's report, there is excess capacity at disposal facilities operated by the Department of Energy for its own LLRW.* Given the short time until the July 1, 2008 deadline, Cal Rad recommends that these disposal facilities be made available to organizations that lack access to other facilities. We recognize that this may require action by Congress. But there are important roles for the NRC and other federal agencies to achieve the goal of assured access to safe disposal facilities for those organizations without access to the Richland, WA or Barnwell, SC disposal facilities.

* "Utilization of the Department's Low-Level Waste Disposal Facilities," DOE/IG-05-5, May 25, 2001.

With respect to this recommendation, it is worth noting that a recent report of the Government Accountability Office (GAO)[‡] recommends that DOE and NRC evaluate the feasibility of using DOE facilities for disposal of non-Greater-Than-Class-C waste from sealed radiological sources gathered in the DOE's Offsite Source Recovery Program (OSRP). This proposal exemplifies the concept of a federal solution to a problem that most states lack the political will to address. However, there is clearly a need for a comprehensive solution that would go beyond waste from sealed sources only. Indeed, the same GAO report cites the mid-2008 Barnwell access cutoff and anticipates that "The increasing quantities of non-GTCC waste that will not have a commercial disposal pathway could heighten interest in using DOE sites for the disposal of this waste."

What Can the U.S. Nuclear Regulatory Commission Do To Promote Assured Access to Disposal Facilities for LLRW?

We believe there are two important roles for the NRC: 1) clearing possible — if any — regulatory hurdles to access to DOE disposal facilities for LLRW generated by NRC and Agreement State licensees, and 2) informing Congress and the Executive Branch about the impending problems beginning July 1, 2008 and making clear the need for timely action on a federal solution to this national problem.

- 1) We respectfully recommend that the NRC determine if there are any regulatory hurdles to use of DOE low-level waste disposal facilities by NRC and Agreement State licensees, and, if so, initiate timely actions to overcome such hurdles.
- 2) We are pleased to note the Commission's comments on the June 2004 report of the U.S. General Accounting Office.* These comments address the serious policy issues related to the nation's LLRW disposal framework:

"At the same time, the nearly 20 years of experience under the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA) has demonstrated the difficulties in siting and licensing a LLRW disposal facility. Not one new facility has been developed in this time under the LLRWPA. Therefore we believe it is in the national interest to begin exploring alternatives identified in Appendix II that would potentially provide a better legal and policy framework for new disposal options for commercial generators of LLRW." (Quoted in part; emphasis added.)

[‡] "NUCLEAR SECURITY: DOE Needs Better Information to Guide Its Expanded Recovery of Sealed Radiological Sources," GAO-05-967, September 2005, pp. 7, 28, 30, 31, 38.

* "LOW-LEVEL RADIOACTIVE WASTE. Disposal Availability Adequate in the Short Term, but Oversight Needed to Identify Any Future Shortfalls." GAO-04-604, June 2004, Page 49.

We were also pleased that several Commissioners specifically mentioned the July 1, 2008 deadline for access to Barnwell during a public meeting of the Commission with its Advisory Committee on Nuclear Waste (ACNW) on January 11, 2006. Now is the time for the Commission to support a long-term resolution to the ongoing disposal dilemma and move forward with the actions noted above.

Other Issues: Expanding Disposal Options for Disposal of Low Activity Waste

Cal Rad respectfully encourages the Commission to continue working with the Environmental Protection Agency to expand options for disposal of low activity waste that might not require disposal at an NRC-licensed facility to protect the public health and safety. This activity and proposed solution would continue to assure protection of the public health and safety while facilitating disposal of these wastes.

With the above exception, we believe that the regulations at 10CFR61, as they apply to disposal of Class A, B, and C waste and the classifications of these wastes are good regulations.

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