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Docket: NRC-2020-0065

Transfer of Very Low-Level Waste to Exempt Persons for Disposal

Comment On: NRC-2020-0065-0001

Transfer of Very Low-Level Waste to Exempt Persons for Disposal

Document: NRC-2020-0065-DRAFT-0129

Comment on FR Doc # 2020-04506

Submitter Information

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General Comment

Please see the Attached comments sent on behalf of EnergySolutions LLC.

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Thank you

See attached file(s)

Attachments

07102020 - ES Public Comment on Interpretive Rule - Transfer of Very Low-Level Waste to Exempt Persons for Disposal - Docket ID NRC-2020-0065

July 10, 2020

CD20-0108

Office of Administration
Mail Stop: TWFN-7-A60M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Program Management, Announcements, and Editing Staff

Subject: Proposed Interpretive Rule: Transfer of Very Low-Level Waste to Exempt
Persons for Disposal - Docket ID NRC-2020-0065

Program Management, Announcements, and Editing Staff:

EnergySolutions herein submits comments on the U.S. Nuclear Regulatory Commission's (NRC's) proposed interpretive rule for the transfer of very low-level waste (VLLW) to exempt persons for disposal (Docket ID NRC-2020-0065). EnergySolutions appreciates the opportunity to comment and supports the NRC's efforts to clarify guidance on proper application of the requirements in Chapters 20.2001 and 20.2002 of Title 10 of the Code of Federal Regulations.

Comment 1: NRC's proposed guidance should be expanded

EnergySolutions supports the approach set forth in the *Federal Register* identified as Docket ID NRC-2020-0065. The Interpretive Rulemaking proposed by the NRC focuses on revising NUREG-1736 guidance that does not consider transfer of material to exempt persons as an authorized method of disposal. Fundamentally, the NRC has indicated that the objective for this change in guidance is to clarify that 10 CFR 20.2001 does allow the transfer of licensed material for disposal to licensed persons who hold specific exemptions, issued pursuant to §§30.11, 40.14 or 70.17. However, EnergySolutions strongly recommends that the NRC's guidance be expanded to include the criteria which needs to be met in order for the NRC to approve an exemption for disposal of waste under §§30.11, 40.14 or 70.17. Specifically, the criteria set forth in the NRC information publication, "NRC's Proposed Interpretive Rule on Transfer of Very Low-Level Waste to Exempt Persons for the Purpose of Disposal"¹ should be included as part of the Interpretive Rulemaking and revision to NUREG-1736. The addition of specific criteria is important to ensure uniform consideration of the case-by-case reviews required to grant an exemption. It should be noted, that during the March 30, 2020 public webinar conducted by the NRC staff, the need for such criteria was discussed.

¹ U.S. NRC. "NRC's Proposed Interpretive Rule on Transfer of Very Low-Level Waste to Exempt Persons for the Purpose of Disposal." April 2020. pg. 2.

Comment 2: Conditions requiring case-by-case exemption requests should be expanded

Because the primary intent of disposal is to safely isolate waste from people and the environment, EnergySolutions agrees that specific exemptions should be limited to land burial. Furthermore, EnergySolutions believes the interpretive rule provides an efficient means by which the NRC can control transfer of appropriate material to exempt facilities.

10 CFR Part 20 offers two methods for seeking exemption authorization. 10 CFR 20.2002 considers authorization for disposal by a means not otherwise authorized in 10 CFR Part 20 and issuance of an exemption allowing disposal in a non-licensed facility. In this interpretive rulemaking effort, the NRC seeks to interpret 10 CFR 20.2001 to include transfer of licensed material to an authorized recipient [as considered in §20.2006(a)(1)], a Part 61 licensed low-level radioactive waste land disposal facility. In doing so, it is unclear to EnergySolutions why the process set forth in §20.2002 would continue to be necessary, as authorization for disposal, following this interpretive rule and related change to relevant language in NUREG-1736. The NRC should expand the NUREG-1736 guidance to include conditions under which the NRC continues to support case-by-case approvals pursuant to §20.2002.

Comment 3: The guidance language addressing the 10 CFR 20.2002 process should be revised to eliminate confusion

Section IV of the *Federal Register* notice states,

“If a licensee proposes to dispose of the material in an unlicensed facility under NRC jurisdiction, then the NRC would issue the specific exemption to the disposal facility in conjunction with the issuance of a §20.2002 approval to the licensee if the proposal is acceptable. If the NRC licensee proposes to dispose of the material in an unlicensed facility under Agreement State jurisdiction, then the Agreement State would separately authorize such disposal, whether by license, exemption, or other regulatory vehicle.”

The focus of this language is on *authorization* for disposal, instead of the process necessary for the NRC or an Agreement State to grant such exemption. EnergySolutions requests this language be expanded to clarify the authorization authority of the NRC.

Furthermore, this language conflicts with the position set forth by NRC in its October 31, 2018 letter to the South Texas Project,

“The NRC staff evaluated your request and determined that, by law, STPNOC must dispose of licensed material in accordance with Title 10 of the Code of Federal Regulations (10 CFR) Section 20.2001, “General requirements,” unless it selects a different method, as is permitted under 10 CFR 20.2002. STPNOC chose to dispose of licensed material using a different method The NRC acknowledges the existing exemption between the State of Texas and unlicensed disposal facilities; however, NRC authorization for STPNOC to use these sites for disposal of this material is also required, as discussed below.”²

The language proposed in the interpretive rulemaking is also inconsistent with the NRC’s position set forth in the All Agreement States Letter³ and Regulatory Issue Summary (RIS) 2016-11.⁴ These documents clearly articulate the policy that authorizations requested by NRC licensees for disposal in a non-licensed facility may only be granted by the NRC and that a secondary exemption from an Agreement State may also be required.

“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,” ... this request should be made to the NRC...”⁵

Conversely, NRC policy is clear that Agreement States have the authority to regulate facilities.

“The Nuclear Regulatory Commission (NRC) and the Agreement States can authorize waste generators to dispose of radioactive materials in facilities other than 10 CFR Part 61 (or Agreement State equivalent) disposal facilities in accordance with 10 CFR Part 20 Subpart K (or equivalent Agreement State

² Erlanger, C. G. “South Texas Project, Units 1 and 2 – Response to the August 14, 2018, Letter on the Disposal of Very Low-Level Radioactive Material and Exercise of Enforcement Discretion (EPID L-2018-LRO-0032).” Letter from the Division of Operating Reactor Licensing of the Office of Nuclear Reactor Regulation. U.S. Nuclear Regulatory Commission to G. T. Powell of the STP Nuclear Operating Company. South Texas Project. October 31, 2018.

³ McDermott, B. J. “Clarification of the Authorization for Alternate Disposal of Material Issued Under 10 CFR 20.2002 and Exemption Provisions in 10 CFR (FSME-12-025).” Letter from the Division of Materials Safety and State Agreements of the Office of Federal and State Materials and Environmental Management Programs. U. S. Nuclear Regulatory Commission to All Agreement States. March 13, 2012.

⁴ NRC “NRC Regulatory Issue Summary 2016-11 Requests to Dispose of Very Low-Level Radioactive Waste Pursuant to 10 CFR 20.2002” Office of Nuclear Material Safety and Safeguards. U.S. Nuclear Regulatory Commission. November 13, 2016.

⁵ Ibid, 2016. pg 2.

regulations). If the Agreement State has not adopted regulations equivalent to 10 CFR 20.2002, the State may accomplish the same regulatory authorization through application of its specific exemption authority, which would grant the disposal request.”⁶

“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...”⁷

However, this authority is different than the actions necessary to grant an authorization to an NRC licensee for a means of disposal not otherwise authorized in Part 20. The Atomic Energy Act grants authority solely with NRC to grant exemptions to Part 50 licensees. EnergySolutions requests the interpretive language be clarified and expanded to better differentiate between the § 20.2001 and § 20.2002 exemption processes.

Comment 4: The basis for the 25 mrem cumulative dose limit in Section V should be added

During the March 30, 2020 public webinar, the NRC indirectly referenced dose criteria in 10 CFR Part 20, Subpart E, *Radiological Criteria for License Termination* (presumably, the reference was to 10 CFR 20.1402 which sets forth the dose standard of 25 mrem per year for unrestricted release of a site undergoing decommissioning). However, no such basis has been included in the *Federal Registry* notice justifying a 25 mrem cumulative dose limit.

Furthermore, NRC’s selection of a 25 mrem per year *dose standard* is unsupported. The limit promulgated in 10 CFR 20.1402 applies to unrestricted release of a site undergoing decommissioning. However, disposal sites to which an exemption would be granted are not licensed and would not be undergoing decommissioning. Similarly, the dose limits for individual members of the public in §20.1301 do not include a 25 mrem per year limit. Additionally, the method for obtaining approval of proposed disposal procedures in 10 CFR 20.2002 does not specify any specific dose standard, other than an imprecise reference to “a few millirem.” Finally, the dose criteria in 10 CFR 61.41 specifies that concentrations of radioactive material which may be released to the general environment in groundwater, surface water, air, soil, plants or animals must not result in an annual dose exceeding an equivalent of 25 mrem to the whole body, 75 mrem to the thyroid, and 25 mrem to any other organ of any member of the public (based upon the recommendations set forth in the International Commission on Radiological Protection Publication 2).

⁶ Ibid, 2012. pg 1

⁷ Ibid, 2016. pg 2.

EnergySolutions requests the interpretive guidance be expanded to clarify and include the basis for the 25 mrem per year dose standard for exemptions granted pursuant to 10 CFR 20.2001.

Comment 5: Use of an Interpretive Rule is not efficient, effective or legally sound and does not ensure that the disposal of low-level radioactive waste in non-licensed facilities satisfy the requirements in 10 CFR Part 20.2001, 20.2002 or 20.2006

Traditionally, the NRC has used guidance to clarify the application of regulatory language (as is the case with NUREG-1736). A choice now to initiate rulemaking to simply clarify 10 CFR 20.2001-related guidance is contrary to NRC's long-established practice of revising a rule with clear regulatory language. Furthermore, the guidance interpretation does not create a legally-binding means for the regulatory terms "*authorized recipient*" (20.1001), "*not otherwise authorized*", (20.2002) and "*to a licensed low-level waste land disposal facility (as defined in Part 61 of this chapter*" (20.2006).

To preserve necessary legally-binding effect, the NRC should initiate rulemaking to revise the language in 10 CFR 20 similar to that contained in 10 CFR 30.41(b)(3) or § 40.51(b)(3), "*To any person exempt from the licensing requirements of the Act and regulation in this part, to the extent permitted under such exemption.*" By following this well-established approach, the NRC would make it explicitly clear that an exempted facility (such as a RCRA-permitted facility) could accept VLLW for disposal. Alternatively, the NRC could initiate rulemaking to modify 10 CFR 20.2001(a)(1) so that it also applies to "*...exemptions granted under the provisions in §30.41, 40.51 and 70.42.*"

EnergySolutions requests that NRC formally initiate rulemaking to adjust the language in 10 CFR 20.2001, instead of using an untested Interpretive Rule designed simply to adjust the guidance in NUREG-1736. In considering this request, it is important to note that the 10 CFR 20.2002 authorization process allowing disposal of VLLW in a non-licensed facility has two key components; an authorization granted by amendment or letter and the granting of an exemption. The approach raised in the Interpretive Rulemaking would essentially provide authorization by language change in guidance set forth in NUREG-1736 which does not seem to be sound regulatory policy for establishing an authorization.

Comment 6: Focus on use of a RCRA disposal facility/landfill within or controlled by a licensed commercial disposal facility (authorized recipient).

The Interpretive Rule language adjustments to NUREG-1736 should emphasize use of a RCRA disposal facility/landfill within or controlled by a commercially licensed (authorized recipient) facility. Such facilities have undergone extensive regulatory review and are best positioned to provide adequate oversight of the disposal of VLLW in a RCRA facility/landfill. In addition, it is important to emphasize that VLLW can only be disposed of in a RCRA disposal facility/landfill that is permitted to allow disposal of radioactive material in that disposal facility/landfill.

Comment 7: Not all RCRA disposal facilities/landfills are authorized (permitted) to allow the disposal of radioactive material within the disposal facility/landfill.

In addition to receiving an exemption from the NRC or an Agreement State to allow disposal of VLLW in a RCRA facility/landfill, it is important for the NRC staff to state that not all RCRA landfills are permitted by the States to allow disposal of radioactive material. In most instances, the States permit RCRA disposal facilities/landfills through Environmental Protection Agency delegated authority under 40 CFR, Parts 239 through 282. It is readily apparent from comments made by members of the public, that this fundamental requirement is not understood. NRC should do more to enhance public understanding and confidence through clarification.

Comment 8: The use of an Environmental Assessment (EA) is adequate for approval of an exemption request to dispose of VLLW in an approved RCRA disposal facility/landfill.

The NRC staff should clarify and emphasize that conducting an EA and citing results of that EA are adequate to authorize an exemption request for the disposal of VLLW. Historically, all authorization requests and the related exemption granted by the 10 CFR 20.2002 authorization process have undergone development of an EA. Thus, precedent has been established and there is no requirement in 10 CFR Part 51 to conduct an Environmental Impact Statement (EIS) for this type of licensing action. Certainly, there is no need for a Programmatic EIS and the NRC should clarify this point to inform the public and enhance public confidence in the exemption process. Any adjustments to the guidance in NUREG-1736 should make this point.

Comment 9: An exemption request will be approved only after thorough regulatory review to ensure that applicable criteria have been satisfied including a complete description of the VLLW to be disposed.

It is important for the NRC to emphasize that any request for an exemption to dispose of VLLW will include “bounding” information and that subsequent disposals must meet the exemption criteria as submitted to and reviewed by the regulatory agency. Any changes and especially exceeding the specified limits for disposal of VLLW will require an updated submission requesting approval for the relevant changes. The guidance in NUREG-1736 should specifically address this “bounding” requirement. Refer to Slide #11 of the NRC staff presentation during the July 1, 2020 Public webinar addressing the need to remain within approved exemption criteria.

Notice in the *Federal Register*: In addition to general comments, EnergySolutions has prepared the following responses to the specific questions posed in the *Federal Register* notice.

1) Do you think that case-by-case review and approval of these transfers is necessary?

No. Any exemption to a non-licensed disposal facility will be reviewed and approved on a case-by-case basis. During this process, public health and safety issues will be considered as part of the regulatory review. NRC's fundamental objective for the Interpretive Rule is to allow VLLW to be transferred as part of the § 20.2001 to a non-licensed facility. Therefore, there is no need for an approval of each transfer for exempted facility disposal with NRC's proposed general regulatory interpretation.

2) What issues associated with transboundary transfer of VLLW should be considered with this interpretive rule?

As a course of routine transactions, VLLW is routinely transported across state boundaries to licensed or exempted disposal facilities. The existing process has been effectively followed for many years and shown to be acceptable to industry. The Interpretive Rule's focus is on a narrow policy matter and not an operational or jurisdictional issue.

3) Should the exempt persons authorized to dispose of certain VLLW that would be considered § 20.2001 "authorized recipients" under this proposed interpretive rule be required to use Uniform Waste Manifests (consistent with § 20.2006) for waste transferred to the exempted disposal facility?

Yes. The requirements of Appendix G to 10 CFR Part 20 require all waste shipped for disposal be accompanied with a uniform waste shipping manifest. In the event of an accident in route, this record provides critical information to first responders. Currently, VLLW transported pursuant to 10 CFR 20.2001 or 10 CFR 20.2002 is accompanied with a Uniform Waste Manifest. Even when transported to an exempt facility, the manifested-VLLW description will continue to provide first responders with vital information. Additionally, the contents of a Uniform Waste Manifest allow exempted disposal facilities to confirm an exempted waste shipment's compliance with the applicable disposal facility's waste acceptance criteria.

Additionally, the U.S. Department of Energy (DOE) maintains a Manifest Information Management System (MIMS) as a means of monitoring the management of commercial low-level radioactive waste in the U.S. The information included in MIMS is obtained from uniform waste manifests for shipments to all operating commercial low-level radioactive waste disposal facilities. Because the proposed interpretive rule suggests exempted disposal facilities be viewed as licensed facilities, then uniform waste manifests would still provide critical input to MIMS.

4) Are there other criteria that the NRC should consider when it reviews a request for a specific exemption for the purpose of disposal?

It is important that rigorous regulatory criteria be promulgated to standardize the review of exemptions for VLLW disposal. Currently, the requirements set forth in § 20.2002(a) thru (d) must be included when seeking authorization for alternate disposal. In addition, review of the required performance assessment is paramount to granting an exemption. NRC has a long history of protecting public health and safety while allowing disposal of VLLW pursuant to the § 20.2002 criteria. As such, any VLLW disposal exemption authorization granted absent review of a specific performance assessment is imprudent. Authorization of exemption for the disposal of VLLW in non-licensed disposal facilities should follow rigorous criteria, including review of a site-specific performance assessment.

5) In light of this proposed interpretive rule, does the compatibility designation raise issues that the NRC should consider?

A rule's compatibility designation is a complex regulatory approach designed to address an Agreement State's necessary conformance with NRC's regulatory processes. However, more should be done by NRC to ensure that there is uniformity in criteria application and clear understanding of the VLLW disposal process. The radiation protection standards set forth in 10 CFR Part 20 are better served by their uniform application criteria throughout all States.

EnergySolutions appreciates the opportunity to comment. Please contact me at (801) 649-2000 if you have questions regarding these comments.

Sincerely,

Vern C. Rogers
Director of Regulatory Affairs