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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-0169

Comment on FR Doc # 2020-04506

Submitter Information

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Submitter's Representative: Justin Cochran

Organization: California Energy Commission

Government Agency Type: State

Government Agency: California Energy Commission

General Comment

See attached file(s)

Attachments

CA DTSC Comments on NRC Proposed Interpretive Rule VLLW Docket ID NRC-2020-0065_7-20-2020

Chair Hochschild Letter to NRC regarding VLLW DOCKET ID NRC-2020-0065_2020-July-20



Department of Toxic Substances Control

Jared Blumenfeld
Secretary for
Environmental Protection

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8800 Cal Center Drive
Sacramento, California 95826-3200

Gavin Newsom
Governor

July 20, 2020

The Honorable Annette Vietti-Cook
Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: U.S. NUCLEAR REGULATORY COMMISSION PROPOSED INTERPRETIVE
RULE: TRANSFER OF VERY LOW-LEVEL WASTE TO EXEMPT PERSONS FOR
DISPOSAL (DOCKET ID: NRC-2020-0065)

Dear Madam Secretary Vietti-Cook:

On May 28, 2020, the California Department of Toxic Substances Control (DTSC) was contacted by the California Energy Commission to provide input and prepare joint comments on the United States Nuclear Regulatory Commission's (U.S. NRC) proposed interpretive rule, "Transfer of Very Low-Level Waste to Exempt Persons for Disposal" (proposed Interpretive Rule). DTSC conducted a cursory review of the proposed Interpretive Rule and its supporting documents. This letter provides DTSC's initial comments on the proposed Interpretive Rule as it pertains to the permitting and oversight of Class 1 hazardous waste landfills in California.

DTSC is a department of the California Environmental Protection Agency. Through its statutory mandates, DTSC cleans up existing contamination, regulates the management of hazardous waste, and prevents pollution by working with the regulated community to reduce hazardous waste and use of toxic materials.

DTSC is requesting further engagement with the U.S. NRC on the implications of the proposed Interpretive Rule. DTSC has concerns about the impacts of the proposed Interpretive Rule on Class 1 hazardous waste landfills and their ability to comply with State and Federal regulations, including, but not limited to, the Resource Conservation and Recovery Act. In addition, DTSC would like to know how the U.S. NRC will implement oversight of Very Low-Level Radioactive Waste (VLLRW), authorize Closure and Post Closure Care, and require financial assurance for Class 1 hazardous waste landfills that may be authorized to accept VLLRW. DTSC requests the U.S. NRC

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provide workshops and/or hearings to promote meaningful and active dialogue with stakeholders. DTSC will be focused on the implications of the proposed Interpretive Rule and its effects on the management and regulation of Class A radioactive waste.

DTSC will continue its review of the proposed Interpretive Rule and supporting documents and may submit additional comments for consideration after the close of the comment period. DTSC looks forward to working with the U.S. NRC. Please send any future notices or correspondence to me, Shawn Browning, Senior Hazardous Substances Engineer, at the following address:

Department of Toxic Substances Control
Permitting Division
8800 Cal Center Drive
Sacramento, CA 95826

Additionally, you may contact me by phone at (916)-255-3742 or by email at Shawn.Browning@dtsc.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Browning", written in a cursive style.

Shawn Browning, P.E.
Senior Hazardous Substances Engineer
Permitting Division
Department of Toxic Substances Control

cc (see next page)

cc (via email):

Mr. Rizgar Ghazi, P.E.
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July 20, 2020

The Honorable Annette Vietti-Cook
Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: U.S. Nuclear Regulatory Commission Proposed Interpretive Rule: Transfer of Very Low-Level Waste to Exempt Persons for Disposal (DOCKET ID: NRC-2020-0065)

Dear Secretary Vietti-Cook:

As chair of the California Energy Commission, I serve as the state's liaison officer to the Nuclear Regulatory Commission (NRC). This letter provides the comments of the California Energy Commission on the above-referenced initiative. Since the adoption of California Assembly Bill No. 1632 (Blakeslee, 2006), the California Energy Commission has taken the lead role in assessing the local costs, impacts, and policy issues associated with California's active and decommissioning nuclear power plants along the state's seismically vulnerable coastline.¹

I am concerned that the proposed interpretive rule, "Transfer of Very Low-Level Waste (VLLW) to Exempt Persons for Disposal," (proposed Interpretive Rule) may weaken the NRC's most critical role: protection of public health, safety, and the environment.² The proposed Interpretive Rule has the potential to increase radiological material disposal access to non-radiologically licensed facilities. Expanded utilization of alternate disposal options could increase burdens on state and local regulators that may or may not be familiar with radiological materials. Furthermore, the proposal reduces NRC oversight in critical areas and instead, empowers licensees to exercise oversight responsibility, essentially shirking the NRC's core mission and role.

The §20.2002 process provides guidance and sets forth the NRC staff process for documenting, reviewing, and dispositioning requests received for alternative disposal of licensed material. This method is intended to be used by entities that possess a radiological material license. The "Authorized Recipient" process creates alternative disposal processes for non-licensed entities that could create confusion and difficulty in

¹ California Assembly Bill No. 1632 (Blakeslee, 2006). Retrieved from http://leginfo.ca.gov/pub/05-06/bill/asm/ab_1601-1650/ab_1632_bill_20060929_chaptered.html.

² NRC mission statement, "The NRC licenses and regulates the Nation's civilian use of radioactive materials to provide reasonable assurance of adequate protection of public health and safety and to promote the common defense and security and to protect the environment." Retrieved from <https://www.nrc.gov/about-nrc.html>.

tracking ownership of radiological materials. This could lead to increased burdens in the tracking of radiological material shipments, characterization, compliance, and monitoring.

The changes proposed in the Interpretive Rule represent significant and fundamental changes to the existing regulatory scheme for disposal of radioactive waste in the United States. Such changes cannot be accomplished via an "Interpretive Rule." NRC staff do not have the authority to essentially amend the statutes and regulations governing disposal of nuclear waste through a reinterpretation without following the required legal process. These powers are reserved to Congress and to the NRC; the fundamental changes to the program for radioactive waste disposal suggested here require a transparent public process to vet the proposed changes. Such process includes addressing and responding to public comment, consultation with agreement states, and further study as to the potential impacts of implementation of the proposed changes in compliance with the federal Administrative Procedures Act. None of this has been done to date. The significant changes proposed here cannot be implemented through an "Interpretive Rule" and would require a formal rulemaking process.

For these reasons, I recommend that the NRC engage stakeholders and the states through a series of noticed workshops and hearings to develop a more comprehensive set of rules that better address the identified issues in compliance with the federal Administrative Procedures Act requirements.

Though I am opposed to the proposed changes, responses to the questions posed by the NRC in its regulatory notice dated March 6, 2020 are provided below.

1. *This interpretive rule would authorize the transfer of licensed material to persons who hold specific exemptions for disposal without a case-by-case review and approval of the transfers. Do you think that case-by-case review and approval of these transfers is necessary?*

Yes, as the receiving entity may not be licensed for radiological materials. Furthermore, the disposal facility must demonstrate a comprehensive program that includes worker protection, radiological monitoring, closure and post-closure dose modeling, notification processes, and adequate financial assurance mechanisms. Additionally, the disposal entity must notify the appropriate state and local entities in a manner deemed adequate by said entities.

2. *A Transboundary transfer of VLLW associated with the approved disposal actions is an important consideration. What issues associated with transboundary transfer of VLLW should be considered with this interpretive rule?*

I assume that "transboundary transfer" is interpreted as the transfer of waste between different states, both associated and not associated with LLW or Agreement Compacts, as well as transfers between licensees and non-licensees. It is our understanding that the current alternate disposal of licensed materials at a non-licensed facility under §20.2002 process and associated exemptions does not meet the statutory definition of LLRW and therefore does not fall under the regulatory authority of the Compacts.

I recommend that VLLW should be subject to the import and export requirements of the Compact system that are applied to the transfer of LLW to a licensed facility.

3. *10 CFR 20.2006 states that “[a]ny licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on NRC’s Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with Appendix G to 10 CFR Part 20.” 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?*

The shipping document requirements in §20.2006 should be required for shipments of VLLW. VLLW shipments should follow the standard practice for shipments from licensees and a new system or requirements are not needed to accommodate VLLW.

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

If this change is adopted, I believe it is critical that the NRC evaluate all Authorized Recipient applications under §20.2001 using robust site-specific, performance-based criteria. To be considered as a VLLW Authorized Recipient, applicants should be required to demonstrate that they exceed or meet all the following criteria:

- Environmental and occupational radiological monitoring program overseen by a State approved compliance program;
- Comprehensive and robust radiological protection program based on appropriate state and NRC programs and consistent with best practices;
- Proven experience receiving and disposing of hazardous materials, ideally demonstrated experience managing LLW;
- Site-specific closure and post-closure process and program for radioactive materials using the industry-standards and models;
- VLLW disposal must be regulated by the appropriate State. Each Authorized Recipient must be able to demonstrate proper regulatory compliance for the respective State.
- Require that all VLLW will be disposed under a State-regulated compliance program through a specific State permit or license from the hazardous waste regulator (or equivalent state entity). Said permit or license must be part of the Authorized Recipient application/approval.
- Demonstrated record of state and local level stakeholder engagement and disposal acceptance at the requested facility; and
- Proof of adequate, appropriate financial assurance mechanisms for the receiving facility.

5. *The regulation in §20.2001 is currently identified as a compatibility C regulation for purposes of Agreement State compatibility. In light of this proposed interpretive rule, does the compatibility designation raise issues that the NRC should consider?*

Under Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements, Interim Procedure State Agreement (SA) SA-200 (2019 Issue Date), Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements:

C= Program element, the essential objectives of which should be adopted by the Agreement State to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. The manner in which the essential objectives are addressed need not be the same as NRC, provided the essential objectives are met.

During the July 1, 2020 NRC meeting, slide 15, bullet 3 stated “**Agreement States may establish more restrictive values under their own regulatory authority.**” The California Environmental Quality Act (CEQA) is California's primary environmental law. CEQA serves to guide entities during issuance of permits and approval of projects. CEQA applies to all discretionary projects proposed to be conducted or approved by a California public agency, including private projects requiring discretionary government approval.

Many facilities licensed in California must meet CEQA requirements which could exceed the National Environmental Policy Act (NEPA) requirements used by the NRC. I am concerned that entities seeking this exemption may assume that they must only meet NEPA requirements which could lead to unnecessary litigation and regulatory challenges. Communication with the appropriate state and local entities is essential in mitigating incidents.

As an Agreement State, California has authority to establish and enforce more restrictive values under its own authority including adopting regulations or issuing a moratorium on disposal of such waste in California landfills pending adoption of a comprehensive regulatory scheme addressing the public health and safety of such disposal. California asserts that nothing in the proposed Interpretative Rule should be deemed to alter California's ability to exercise this authority or preempt California in its ability to enforce these more restrictive values as determined by California.

I offer the following general comments on the proposed Interpretive Rule for consideration:

- I recommend that NRC's VLLW transportation guidelines and requirements match those of LLW as the processes and procedures are well established and familiar to government and private sector entities.
- I am concerned that this new process will create some confusion, specifically as it pertains to the handling of generally exempt materials in Parts §30 and §40 and

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materials that straddle the line between LLW and VLLW. Without a robust tracking, characterization, compliance, communication, and monitoring process there is the possibility that some materials will end up in the wrong location or facilities. This could result in extensive cleanup/remediation costs and risks to workers and the public.

I welcome the opportunity to work with the U.S. Nuclear Regulatory Commission's staff on developing a collaborative, comprehensive solution. Please send any future notices, correspondence, and documents to my Senior Nuclear Policy Advisor Justin Cochran, Ph.D., at the California Energy Commission, MS-39, 1516 Ninth Street, Sacramento, CA, 95814-5512, or by e-mail at Justin.Cochran@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "David Hochschild". The signature is fluid and cursive, with a large initial "D" and a stylized "H".

David Hochschild
Chair
California Energy Commission