

# PUBLIC SUBMISSION

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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

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## General Comment

See attached file(s)

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## Attachments

Comment on NRC Proposed Rule (NRC-2020-0065-0001)

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Dear Nuclear Regulatory Commission:

I am writing to comment on the Nuclear Regulatory Commission's proposed rule (NRC-2020-0065-0001) of Transfer of Very Low-Level Waste to Exempt Persons for Disposal as a third-year law student at City University Of New York School of Law focusing on environmental law and as a concerned citizen. I strongly encourage that NRC keeps to its current guidance in NUREG-1736, only allowing the transfer of licensed material for disposal to a licensed person or an authorized recipient under 10 CFR 20.2001<sup>1</sup>, and not allow the transfer of low-level of radioactive waste to an exempt recipient for land burial.

The 10 CFR 61 establishes licensing requirements for land disposal of low-level radioactive waste. Low-level radioactive waste does not have a statutory or regulatory definition, but the term is used by NRC to refer to waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in §20.1003. Low-level radioactive waste includes incinerator ash from research facilities, demolition debris (concrete, metal), soil, and other garbage from nuclear fuel facilities or decommissioning nuclear power plants. NRC's current regulation requires that a person must be licensed to receive, possess, and dispose of radioactive waste containing source, special nuclear, or byproduct material at a land disposal facility<sup>2</sup>. With the new proposed rule, NRC will allow the licensee to dispose of licensed material by transfer to a person who holds exemptions for the purpose of disposal. The literal

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<sup>1</sup> <https://www.nrc.gov/waste/llw-disposal/regs.html>

<sup>2</sup> §61.3: Licensing requirement

definition of exemption means the process of freeing or state of being free from an obligation. By allowing exempt recipient to disposal of radioactive waste, NRC is permitting the exempt recipient to (1) remove themselves from any liability that may result from improper disposal, (2) bypass the mechanics and safeguards that are put in place to protect and “not endanger life or property or the common defense and securities and are otherwise in the public interest”<sup>3</sup>, (3) eliminating the statutory mandate to oversee the disposal of radioactive waste by giving the exempt recipient unlimited disposal without any supervision, (4) burdening the state with health costs that might result from unmonitored disposal of radioactive waste, and (5) conflicts with Resource Conservation and Recovery Act’s (RCRA) mandate to ensure the safe management and cleanup of solid and hazardous waste.

Essentially, the new proposed rule will cut out any liability for an exempt recipient by not requiring them to be licensed in order to dispose of radioactive waste. It was logical for the regulation to speak about liability of licensee because it seemed obvious (intend of the legislatures) that licensed individuals/entities will be the only ones handling such radioactive waste and denial or revocation of license acted as deterrence for noncompliance. But, the new interpretative rule removes liability by placing the individual allowed to dispose of the radioactive waste in the category of exempt recipients who are not subject to the licensing requirement. The exempt recipient would not have any incentive to comply with mandates of the NRC because they are labeled as “exempt” and they would not have to be concerned about liability or that their license might be denied or revoked. Furthermore, the exempt recipient might not have the motivation to train their employees to safely handle such material if they have nothing to be held accountable for. Although the proposed rule calls for the applicant for the

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<sup>3</sup> §§ 30.11

exemption to prepare an environmental analysis of the requested exemption as required by the National Environmental Policy Act (NEPA) and NRC's NEPA regulation, it does not undercut the fact that the exempted recipient will not be subject to liability as a licensee would be under the current regulation.

The new interpretative rule will permit the exempt recipient to circumvent the protections in place that will “not endanger life or property or the common defense and securities and are otherwise in the public interest”. For example, the §61.24 (conditions on license) of NRC regulation allows the agency to see whether the licensee is adhering to licensing requirement by requiring a licensee to “submit a written statement under oath upon request of the Commission to enable the Commission to determine whether or not the license should be modified, suspended, or revoked”, which in itself is to ensure the health and safety of the people through requirements for proper disposal of radioactive waste. But, the proposed rule does not place such conditions on the exempt recipient because these conditions only apply to the licensee, not the exempt recipient. This allows the exempt recipient to ignore the risks to the public health when they dispose of low-level of radioactive waste which “doses to the public equivalent to more than 900 chest X-rays over a lifetime, with a cancer risk 20 times higher than the upper end of the U.S. Environmental Protection Agency's acceptable risk range and thousands of times the risk goal for Superfund sites. Both the National Academy of Sciences and the Environmental Protection Agency calculated that the risk of such doses would be every 500th person exposed to getting cancer from the radiation.”<sup>4</sup>

Moreover, the new proposal will give the exempt recipient unlimited disposal of radioactive waste without any supervision. The NRC asks the public to comment on whether

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<sup>4</sup> <https://ens-newswire.com/2020/04/08/low-level-radioactive-waste-could-go-to-local-landfills/>

case-by-case review and approval of the transfer, of licensed material to persons who hold specific exemptions for disposal without a case- by-case review and approval of the transfers, is necessary. Even if NRC conducts a case-by-case review and approved of the transfer for the exempt recipient to be “authorized recipient”, this mechanism only permits the exempt recipient to initiate the transfer but does not allow NRC to monitor them as they continue to dispose of the radioactive waste. Letting the exempt recipient dispose of radioactive waste would “opens the floodgates” for nuclear waste to be disposed of “as if not radioactive”<sup>5</sup>.

Furthermore, the new proposed rule will burden the state with health costs that might result from the unmonitored disposal of low-level radioactive waste. For example, states agree that disposal at sites that have no permits or regulatory oversight, posing an unnecessary and unacceptable risk to its citizens and environment<sup>6</sup>. It is the states whom in the end have to pick up the health and clean-up cost that might result in unsupervised dumping of radioactive waste. It is discriminatory for the agency to incur such costs on the states.

Lastly, the proposed interpretative rule will conflict with the Resource Conservation and Recovery Act’s (RCRA) directive to ensure the safe management and cleanup of solid and hazardous waste. Although the low-level radioactive waste might not fall into a solid waste category, it is a hazardous waste because the low-level radioactive waste consists of mixed waste and according to RCRA, mixed wastes are hazardous waste which also contains radioactive material.<sup>7</sup> Because the proposed rule does not mandate NRC to oversee and manage the exempt recipient’s activities, it will not ensure that the low-level radioactive waste or hazardous waste is safely disposed of. Also, the proposed rule is in opposition to the legislative history behind the

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<sup>5</sup> <https://www.theguardian.com/environment/2020/may/07/nuclear-regulatory-commission-radioactive-waste>

<sup>6</sup> <https://www.env.nm.gov/wp-content/uploads/2020/05/2020-07-20-NMED-NRC-VLL-Waste-final.pdf>

<sup>7</sup> <https://www.epa.gov/hw/defining-hazardous-waste-listed-characteristic-and-mixed-radiological-wastes#react>

exemption that show Congress' intent to preserve the enforcement provision of the Atomic Energy Act<sup>8</sup> under which the NRC also operates.

### **Conclusion**

It seems illogical for an agency to turn their back on a long-standing regulation that actually makes certain for a safe environment and minimizes the health risk to people by taking the unsafe route which potentially increases the risk of exposing people to radioactive waste. Even though US Ecology has proven that large quantities of low-activity radioactive materials can be safely and securely disposed of in RCRA Subtitle-C hazardous waste facilities like the one in Grand View, Idaho<sup>9</sup>, NRC is willing to forgo this course without reasonable explanation because they can under a vague excerpt in the regulation calling for exemption. It is also unfair for the ones who received license to have to comply with all the mandates of the regulation while now the exempt recipients are free to dispose of the low-level radioactive waste as they wish without restriction or oversight. NRC proposed rule in providing the exempt recipient with the authority to dispose of low-level radioactive waste is contrary to the public interest and thus, NRC should not go forward with finalizing the proposed rule.

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<sup>8</sup> Clare Hartnett, The Cleanup of Releases of Radioactive Materials from Commercial Low-Level Radioactive Waste Disposal Sites: Whose Jurisdiction?, 34 Nat. Resources J. 349, 367 (1994)

<sup>9</sup> <https://ens-newswire.com/2020/04/08/low-level-radioactive-waste-could-go-to-local-landfills/>