

August 20, 2007

Gary W. Butner, Acting Chief
Radiologic Health Branch
CA Department of Health Services
P.O. Box 997414, MS 7610
Sacramento, CA 95899-7414

Dear Mr. Butner:

We have reviewed California's "Health and Safety Code-Radiation Control Law" contained in Section 115261 received by our office on June 25, 2007. The legislation was reviewed by comparison to 10 CFR 61, "Licensing Requirements for Land Disposal of Radioactive Waste". We discussed our review of the legislation with you on August 9, 2007.

We offer the following comments:

1. As noted in a letter to the State dated April 9, 2002, California proposed an amendment that would "ensure no radioactive material will be released into the environment." This is not compatible with NRC's requirements in 10 CFR 61. While that specific statement is not in the latest version of Section 115261 sent in for NRC review, there is a requirement that states:

"The department may issue a license to dispose of low-level radioactive waste pursuant to this chapter only if the department determines there is a preponderance of scientific evidence that there is not a hydrologic pathway whereby the Colorado River or any other agricultural or drinking water source could be contaminated with radioactive waste and harm public health or the environment."

This is incompatible with 10 CFR 61.41, one requirement of which states that:

"Reasonable effort should be made to maintain releases of radioactivity in effluents to the general environment as low as is reasonably achievable."

Due to 10 CFR 61 having a Compatibility Category A designation, California's statute is more restrictive, and does not meet the compatibility Category A designation assigned to 10 CFR 61.41. California needs to adopt the language of 10 CFR 61.41 to meet the Compatibility Category A designation of the rule.

2. Also noted in the letter dated April 9, 2002, was California requirement that "any low-level radioactive waste site licensee provide continual monitoring and repackaging of materials to prevent release." The latest version of Section 115261 sent in for NRC review no longer has the waste repackaging requirement, but the requirement for continual monitoring still remains in 115261(b)(2), which states:

“Provide visual inspection or remote monitoring to detect potential or actual releases of low-level radioactive waste from the engineered barriers.”

This requirement appears to define a LLW storage facility, not a disposal facility. As such, this requirement of the California legislation is incompatible with those of NRC under the Agreement.

We recommend that you address the two comments above concerning the authority provided to the Department concerning Low Level Radioactive Waste Disposal. California may resolve these comments through revision or interpretation of State law. NRC will accept interpretations provided by the State Attorney General, or other attorney designated as legal advisor to the radioactive materials program.

If you have any questions regarding the comments, please contact Kathleen Schneider, State Regulation Review Coordinator at 301-415-2320 (email: kxs@nrc.gov) or William Rautzen at 301-415-7206 (e-mail: wrr@nrc.gov).

Sincerely,

RA By

Robert J. Lewis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

This requirement appears to define a LLW storage facility, not a disposal facility. As such, this requirement of the California legislation is incompatible with those of NRC under the Agreement.

We recommend that you address the two comments above concerning the authority provided to the Department concerning Low Level Radioactive Waste Disposal. California may resolve these comments through interpretation of State law. NRC will accept interpretations provided by the State Attorney General, or other attorney designated as legal advisor to the radioactive materials program. .

If you have any questions regarding the comments, please contact Kathleen Schneider, State Regulation Review Coordinator at 301-415-2320 (email: kxs@nrc.gov) or William Rautzen at 301-415-7206 (e-mail: wr@nrc.gov).

Sincerely,

IRA Byl

Robert J. Lewis, Deputy Director
 Division of Materials Safety and State Agreements
 Office of Federal and State Materials
 and Environmental Management Programs

DIR RF(7-26)
 DCD (SP03)
 Linda McLean, RSAO
 Morendi California File

SUNSI Review Complete

- Publicly Available Non-Publicly Available
- Non-Sensitive Sensitive

Incoming ML: ML071760137

DOCUMENT NAME: F:\NRC\Regs\CALegislationReview.wpd

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	SAISB	SIASB	OGC	Sais:BC	MSSA:DD
NAME	WRautzen	KSchneider	FCameron	KSchneider for DWhite	RJLewis
DATE	07/18/07*	07/19/07*	08/02/07*	08/09/07*	08/20/07*

ML072330389

OFFICIAL RECORD COPY