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July 20, 2020

Office of Administration  
Mail Stop: TWFN-7-A60M  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

RE: Transfer of Very Low-Level Waste to Exempt Persons for Disposal– 85 FR 13076;  
Docket ID NRC–2020–0065

Dear Sir/Madam:

The Materials Management and Hazardous Waste Subcommittees of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) appreciate the opportunity to jointly provide comments on the U.S. Nuclear Regulatory Commission's (NRC's) Proposed Interpretive Rule, Transfer of Very Low-Level Waste to Exempt Persons for Disposal NRC-2020-0065, published in the Federal Register on March 6, 2020 (85 FR 45). These comments have not been reviewed or adopted by the ASTSWMO Board of Directors. In addition, individual State or Territorial radiological, solid waste, and hazardous waste programs may also provide comments based on their own perspectives and experiences.

ASTSWMO is an association representing the waste management and remediation programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes State waste program experts in the management and regulation of radiological, solid, and hazardous wastes.

The Subcommittees are providing comments on the following questions NRC posed in NRC-2020-0065 85 FR 45:

**Question 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?

**Comment 1.** The Federal Register Notice provides minimal information on how this interpretive rule would be implemented, in particular, the regulatory framework of implementation, and how the 25 mrem/yr annual dose limit will be calculated. Case-by-case reviews ensure that the regulator agency, NRC or Agreement State, is assessing the proposed waste stream and source term in conjunction with the source term already present at the RCRA waste disposal facility. If a specific exemption is granted to the RCRA disposal facility, it is not clear what the regulatory framework would be and which regulatory agency will be overseeing the RCRA disposal facility to ensure source term tracking is accurate and within the approved limits. If the RCRA facility is exempt, by

definition, the NRC or Agreement State would not be regulating the facility, thus leaving this responsibility to a U.S. Environmental Protection Agency (EPA)-authorized State under RCRA Subtitle C, an EPA-approved State municipal solid waste landfill permit program under RCRA Subtitle D, or EPA. Regulatory oversight should include inspections of the disposal facility and review of documentation to ensure compliance with the conditions of the exemption. These are tasks that require special knowledge and understanding of radiation and radioactive waste disposal considerations that standard RCRA D solid waste or RCRA C hazardous waste regulators may not be familiar with. If the terms of the exemption are not being adhered to by the RCRA disposal facility, it is unclear what the citation and corrective action process would be since the disposal facility would be exempt from the NRC and Agreement State regulations.

In the case-by-case scenario the generator, who is the requestor, can pay for the request through the established codified fee code systems. Since “exempt persons” is not a current license fee category, it is unclear how fees for the complicated applications identified in the proposed interpretation would be determined and recovered.

**Question 2.** Transboundary transfer of VLLW [Very Low-Level Radioactive Waste] 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?

**Comment 2.** It is not clear if the RCRA waste site is granted exemption, may the RCRA waste site then accept VLLW from any State, or potentially overseas waste? Currently the Compact System controls the movement of radioactive waste across States lines. Adherence to the Compact System is overseen at the end of the disposal process at the 10 CFR 61 sited disposal facilities. If RCRA facilities are going to accept this waste, it is not clear which regulatory agency will oversee adherence to the rules of the Compact System.

**Question 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?

**Comment 3.** The source term within the waste disposal shipment(s) must be disclosed to the RCRA facility for source term tracking purposes. Since RCRA facilities have their own waste acceptance criteria and manifesting systems, it is unclear how the NRC’s Uniform Manifest would integrate into the RCRA facility’s current manifesting system.

**Question 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?

**Comment 4.** The NRC should perform an assessment of the long-term radioactive impact (half-life) and capacity of the existing RCRA C and D facilities to better understand the impact that this proposed interpretation would have on existing RCRA disposal site capacity. Is there an all controls fail assessment? Also, the financial burden to both the NRC Agreement States that would be

reviewing these complicated applications, and State RCRA Subtitle C and Subtitle D programs that would most likely take the burden of overseeing adherence to these exemptions, must be assessed.

**Question 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?

**Comment 5.** Compatibility Category C is appropriate. The NRC should assess the cost associated with the rulemaking that will be required for both Agreement State Radiation regulations and State RCRA Subtitle C and Subtitle D regulations.

To summarize, the Subcommittees have concerns with the proposed interpretive rule. NRC seems to be transferring its responsibility for ensuring that exemption limitations are met to State solid or hazardous waste officials without any assurance that they have the needed radiation health physics background, understanding of the process, or any means of recovering the costs in taking on the responsibility.

We appreciate the opportunity to comment and look forward to NRC's response to these comments. We look forward to providing additional input on future rulemakings.

Sincerely,



Paula Bansch (IN), Chair  
ASTSWMO Hazardous Waste Subcommittee



Catherine Jamieson (VT), Chair  
ASTSWMO Materials Management Subcommittee