



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

(FSME-12-025, March, Other, 10 CFR 20.2002)

March 13, 2012

## ALL AGREEMENT STATES

### CLARIFICATION OF THE AUTHORIZATION FOR ALTERNATE DISPOSAL OF MATERIAL ISSUED UNDER 10 CFR 20.2002 AND EXEMPTION PROVISIONS IN 10 CFR (FSME-12-025)

**Purpose:** To clarify the use of 10 CFR 20.2002 and similar Agreement State processes for the disposal of radioactive materials in RCRA disposal facilities or other unlicensed facilities (unlicensed facilities), when the unlicensed facility is located in another State.

**Background:** 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 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.

When a licensee obtains 20.2002 approval to send material to a disposal facility that is not licensed by the NRC or an Agreement State, the disposal facility operator must obtain either an NRC or Agreement State license or an exemption from the NRC or Agreement State licensing requirements. The NRC, for example, can grant exemptions from its licensing requirements under 10 CFR 30.11, 40.14, or 70.17.

In some cases, it is necessary for the NRC and an Agreement State or multiple Agreement States to become involved in the disposal process. For example, if a licensee in Agreement State A wants to send material for disposal at an unlicensed facility in Agreement State B, then the licensee would need to receive approval under Agreement State A's 20.2002 provisions, and the unlicensed facility would need to receive an exemption or license from Agreement State B.

**Discussion:** There are several situations where the NRC and an Agreement State or multiple Agreement States would be involved in the disposal of material at an unlicensed facility:

1. An Agreement State licensee requests authorization under the State's 20.2002-equivalent regulation to dispose of material at an unlicensed facility in that Agreement State. In this situation, only one Agreement State is involved, and that Agreement State would evaluate both the 20.2002-equivalent request and would license or exempt the unlicensed facility.
2. An Agreement State licensee requests authorization under the State's 20.2002-equivalent regulation to dispose of material at an unlicensed facility in another Agreement State. In this situation, both Agreement States would need to become involved. The Agreement State that regulates the licensee seeking to dispose of

material at an unlicensed facility in another Agreement State would need to approve disposal under the Agreement State's 20.2002-equivalent regulation. The unlicensed facility would then need to obtain a license or an exemption from its Agreement State prior to accepting the material for disposal.

3. An Agreement State licensee requests authorization under the State's 20.2002-equivalent regulation to dispose of material at an unlicensed facility in a non-Agreement State (a state under NRC jurisdiction). In this situation, both the Agreement State and the NRC would need to become involved. The Agreement State that regulates the license seeking to dispose of the material at an unlicensed facility in another state would need to approve disposal under the Agreement State's 20.2002-equivalent regulation. The unlicensed facility would then need to obtain a license or an exemption from the NRC prior to accepting the material for disposal.
4. An NRC licensee requests authorization under 20.2002 to dispose of material at an unlicensed facility in an Agreement State. In this situation both the NRC and the Agreement State would need to become involved. The NRC would need to approve the disposal of the material under 20.2002. The unlicensed facility would then need to obtain a license or an exemption from the Agreement State's regulations prior to accepting the material for disposal.
5. An NRC licensee requests authorization under 20.2002 to dispose of material at an unlicensed facility in a non-Agreement State. In this situation the NRC will review both the 20.2002 request and the exemption or license request. No Agreement State involvement is required. This issue was first addressed for a specific facility in a letter dated December 16, 2004 to the State of Idaho (ADAMS ML043510144).

In some cases, scenarios 2, 3, and 4 may not require the involvement of the NRC or another Agreement State because some materials are already exempt from the NRC's licensing requirements (and those of the Agreement States). When this is the case, the unlicensed facility does not need a specific exemption or license to dispose of the material. For example, a source material licensee may transfer unimportant quantities of source material (10 CFR 40.13(a)) to persons exempt (10 CFR 40.51(b)(3) & (4)). This can be done without any specific licensing action by the NRC (or Agreement State).

As noted in the scenarios discussed above, an Agreement State cannot authorize disposal at an unlicensed facility outside of its jurisdiction. If an Agreement State licensee requests authorization to send material to another Agreement State or a non-Agreement State for disposal at an unlicensed facility, then the Agreement State should contact the other Agreement State or the NRC to ensure that the disposal facility has a license for receiving and disposal of the material or receives an exemption prior to disposal.

All licensing actions taken by the Agreement States are subject to review under the Technical Quality of Licensing indicator during their Integrated Materials Performance Evaluation Program review.

In summary, the operator of an unlicensed facility receiving NRC and Agreement State regulated waste for disposal must receive either an exemption or a license from the appropriate regulatory authority (either the NRC or an Agreement State depending on the location of the disposal site) prior to receiving or disposal of the material.

In order to inform NRC licensees and interested stakeholders, specific guidance regarding the review process for the evaluation of requests under 20.2002 is under development. This information will be shared with the Agreement States once it has been finalized.

If you have any questions regarding the correspondence, please contact me at 301-415-3340 or the individual named below.

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