

THE LOW-LEVEL RADIOACTIVE WASTE POLICY AMENDMENTS ACT OF 1985
MILESTONES: SURCHARGE REBATES, ESCROW ACCOUNT ADMINISTRATION
AND COMPLIANCE DETERMINATION^a

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ABSTRACT

The Department of Energy (DOE) published a Notice of Inquiry in the Federal Register seeking comment on the DOE proposed criteria for compliance with the 1988 milestone. The notice sets forth the procedures by which the nonmember states and nonsited compact regions must submit documentation of compliance and request rebates, and by which DOE will determine compliance.

INTRODUCTION

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (the Act) established a system of milestones, surcharges, rebates, and penalties to encourage the nonmember states and nonsited compact regions to develop new disposal facilities for low-level radioactive waste (LLRW) by December 31, 1992. The January 1, 1988 milestone requires the nonsited states to develop a siting plan, and the nonsited compact regions to identify the host state and develop a siting plan. The Department of Energy determines compliance with the milestones for the purpose of disbursing rebates from the Low-Level Waste Surcharge Escrow Account. The sited states (South Carolina, Nevada, and Washington) and the sited compact regions (Southeast, Rocky Mountain, and Northwest) make compliance determinations for the purpose of imposing penalty surcharges and/or denial of access to existing disposal sites.

1988 MILESTONE

The statutory requirements for the January 1, 1988 milestone are stated in Section 5(e)(1)(B) of the Act as follows:

"By January 1, 1988 -

(i) each non-sited compact region shall identify the State in which its low-level radioactive waste disposal facility is to be located, or shall have selected the developer for such facility and the site to be developed, and each compact region or the State in which its low-level radioactive waste disposal facility is to be located shall develop a siting plan for such facility providing detailed procedures and a schedule for establishing a facility location and preparing a facility license application and shall delegate authority to implement such plan;

(ii) each non-member State shall develop a siting plan providing detailed procedures and a schedule for establishing a facility

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location and preparing a facility license application for a low-level radioactive waste disposal facility and shall delegate authority to implement such plan; and

(iii) the siting plan required pursuant to this paragraph shall include a description for the optimum way to attain operation of the low-level radioactive waste disposal facility involved, within the time period specified in this Act. Such plan shall include a description of the objectives and a sequence of deadlines for all entities required to take action to implement such plan, including, to the extent practicable, an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning facility operation. Such plan shall also identify, to the extent practicable, the process for (1) screening for broad areas; (2) identifying and evaluating specific candidate sites; and (3) characterizing the preferred site(s), completing all necessary environmental assessments, and preparing a license application for submission to the Nuclear Regulatory Commission or an Agreement State."

FEDERAL REGISTER NOTICE

DOE published a Notice of Inquiry in the Federal Register (the Notice) early in 1987 seeking comment on the processes for nonsited states and compact regions to submit compliance documentation and request a rebate, and for DOE to determine compliance. The Notice contained proposed criteria which the states must meet for a determination by DOE of compliance with the statutory requirements of the 1988 milestone. A forty-five day comment period was initiated at the time of publication of the Notice. Once DOE has resolved the comments received on the Federal Register Notice it will publish a second Federal Register Notice noting comments and their resolutions along with the final procedures and compliance criteria.

Compliance with the milestone is the basis of eligibility for rebates from the Department of Energy Low-Level Waste Surcharge Escrow Account created by the Act. Under the Act, the surcharge money deposited by the sited states to the Escrow Account and the accrued interest is to be (a) rebated to each nonsited compact region and nonmember state that has met the statutory requirements of the January 1, 1988 milestone, or (b) returned to the sited states that collected the original surcharge if a nonsited compact region or nonmember state does not meet the milestone requirements.

PROPOSED CRITERIA

The proposed criteria for milestone compliance are based on the explicit statutory requirements in Section 5(e)(1)(B) of the Act, as well as DOE's interpretation of the implicit requirements of the Act. The criteria identify the requirements for documenting selection of the host state, preparing the siting plan and schedule, and identifying how authorities have been delegated to implement the siting plan. The criteria are the minimum requirements which the nonsited states and compact regions must meet in order to be in compliance with the 1988 milestone. DOE may request additional information from any state or compact region submitting compliance documentation for evaluation.

In the spirit of cooperation with the nonsited states and compact regions, DOE is seeking comments on the criteria through the forty-five day response period to the Federal Register Notice. The final criteria published in a second Federal Register Notice will then reflect concerns of the nonsited states and compact regions.

Host State Designation

The Act provides that host state designation may take one of two approaches. The first approach requires the nonsited compact region to simply identify the host state in which the LLRW disposal facility will be located. To be in compliance with this approach, the proposed criteria require the nonsited compact region designee to identify the host state in writing to DOE. The second approach requires the nonsited compact region to select a site developer and the site to be developed. To be in compliance with the second approach, the proposed criteria require the compact region designee to issue a letter to DOE that (a) identifies the site developer and includes a copy of the signed contract between the compact region or state and the developer, (b) identifies the site to be developed by providing a legal description of the site, and (c) indicates the current legal ownership of the selected land area.

The compact designee in all cases is the executive director, compact chairman, or other authorized agent. This criterion reflects the potential differences in authority structure between the compacts.

Siting Plan Submittal

The proposed criteria require the nonsited compact region designee to submit the completed siting plan with the request for rebate from the Escrow Account. The siting plan must be signed by the person(s) designated to approve the plan. The process is identical for the nonmember state. The nonmember state designee must submit the completed siting plan with the request for rebate, and again, the siting plan must be signed by the person(s) designated to approve it. The nonmember state designee may be the governor or authorized agent.

Siting Plan Process Descriptions

DOE has determined the minimum required content of the siting plan based on explicit requirements of the Act and DOE's interpretation of the implicit requirements of the Act. DOE determined that detailed process descriptions should be included for all processes leading to submittal of the license application. In addition, process descriptions, albeit less detailed, should be included for all processes leading from submittal of the license application to operation of the disposal facility.

Those processes for which detailed explanations are required include:

- Screening broad areas
- Identifying candidate sites
- Evaluating candidate sites
- Characterizing preferred sites
- Acquiring site lands
- Completing environmental assessments
- Selecting disposal technology
- Preparing the license application.

Additionally, the proposed criteria specify the content for each process description:

- Major task elements to be completed, including but not limited to: criteria development; regulatory or legislative development; development of scopes of work for technical subtasks; selection of subcontractors; and the administration, review, and control of work
- Identification of the objective for the process or each task within the process
- Identification of the organizations responsible for completion of each task within the process
- Citation of the authority by which responsible organizations are authorized to complete assigned tasks
- Identification of the criteria, regulatory, statutory, or other requirements which are applicable to each task within the process
- Description of the host state or compact region approval process.

For those tasks which are in progress, the proposed criteria require the process description to include a summary of accomplishments and a citation of appropriate documentation. For those tasks which have been completed, the criteria require only a summary of accomplishments and citation of appropriate documentation.

The processes for which the proposed criteria require less detailed descriptions include:

- License application review and issuance
- Acquisition of NRC Agreement State status, if applicable

- Facility design
- Facility construction
- Development of facility operating procedures.

These process descriptions should include to the extent practicable:

- A general description of the major tasks to be completed within the process
- An identification of the major organizational responsibilities for completion of tasks
- Citations of the authority under which responsible organizations will operate
- Citations of criteria, regulatory, statutory, or other requirements applicable to these processes
- Summaries of the approvals required for each process, where applicable.

Again, where the process is underway, the description should include a summary of accomplishments and a citation of appropriate documentation; and for those processes which have been completed, the siting plan need contain only a summary of accomplishments and citation of documentation.

Schedule

The siting plan should include a schedule that identifies the optimum sequence of deadlines for all major tasks that should be performed to attain operation of the LLRW disposal facility. The proposed criteria require that milestones for initiation and completion of major tasks within specified processes be provided. The processes named are those which DOE

considers critical to attaining operation of the disposal facility. In addition, the schedule must identify all constraints, float time for all activities, and all activities on the critical path. In particular, all activities on the critical path or with less than three months float time shall be identified along with the estimated start date, duration, end date, and float time. This close examination fulfills the requirement in the Act of identification of all activities "...in which a delay in the start, or completion, of such activities will cause a delay in the beginning facility operation."

Delegation of Authority

The Act requires the nonsited compact regions and nonmember states to "...delegate authority to implement such plan..." The proposed criteria require evidence of appropriate delegation of authority by entries in the process descriptions in the siting plan. These descriptions should identify existing authorities by which the designated responsible organizations are authorized to complete their assigned tasks, or should describe how and when authorities will be granted to responsible organizations that do not currently have authorization. A separate section in the siting plan on delegation of authorities is not required so long as the process descriptions provide the required information.

CONCLUSION

Specific information on DOE's requirements for compliance with the January 1, 1988 milestone should be attained from the final Federal Register Notice to be published following resolution of comments from the Notice of Inquiry. The second Federal Register Notice will contain the final compliance criteria and procedures for nonmember states and nonsited compact regions to use for submitting documentation of compliance with the milestone and requesting a rebate. DOE intends to use these submissions to determine compliance with the milestone.