

The CSN provides users of this website with an unofficial translation of the law in question. You are therefore advised that this translation is for your information only and may not be entirely up to date when you consult it. For official texts, look up the law in the Boletín Oficial del Estado, where you can find laws in any of the official languages of the State of Spain.

The logo for the Consejo Superior de Normas (CSN) is displayed. It features a large, stylized 'C' in green, followed by 'S' and 'N' in blue. The letters are bold and sans-serif. The logo is positioned on the left side of the page, with a horizontal line above it and a vertical blue bar to its left.

El CSN pone a disposición de los usuarios de esta web una traducción no oficial del texto de la norma de referencia. Se advierte, por tanto, de su carácter puramente divulgativo, y de la posibilidad de que no se encuentre debidamente actualizada en el momento de su consulta. El texto oficial es el publicado en el Boletín Oficial del Estado en cualquiera de las lenguas oficiales del Estado español.

# OFFICIAL STATE GAZETTE

No.58

Saturday 8 March, 2014

Sec. I. Page 22069

## I. GENERAL PROVISIONS

### MINISTRY OF INDUSTRY, ENERGY AND TOURISM

**2489** *Royal Decree 102/2014 of 21 February, on the responsible and safe management of spent nuclear fuel and radioactive waste.*

Activities related to electricity generation in nuclear reactors and the use of radioisotopes in medicine, industry, agriculture and research give rise to significant amounts of spent nuclear fuel and radioactive waste. These materials must be managed so that no damage is caused to people or the environment, avoiding any undue burden for future generations.

Council Directive 2011/70/Euratom of 19 July 2011 laying down a Community framework for the responsible and safe management of spent nuclear fuel and radioactive waste, represents a new step in community regulation of nuclear safety, following the adoption of Council Directive 2009/71/EURATOM of 25 June 2009, establishing a Community framework for the nuclear safety of nuclear installations, imposing a series of obligations for the establishment of a national framework for nuclear safety applicable to such facilities.

In the case of Spain, Law 25/1964 of 29 April on nuclear energy contains the basic requirements and principles applicable to the management of radioactive waste, establishing that the management of radioactive waste and spent nuclear fuel, and the decommissioning and closure of nuclear installations, is an essential public service that is reserved to the ownership of the state, the National Radioactive Waste Company (*Empresa Nacional de Residuos Radiactivos, S.A.*, ENRESA) being entrusted with the management of this public service.

While current national law already largely incorporates the framework required by Directive 2011/70/Euratom, it was considered necessary to draw up a new Royal Decree to take into account some provisions that are not covered by such law, and to enact Law 25/1964 of 29 April regarding regulating the management of spent nuclear fuel and radioactive waste. The regulation of ENRESA's activities has been updated, this present instrument repealing Royal Decree 1349/2003, of 31 October, on the management of the activities of the *Empresa Nacional de Residuos Radiactivos, S.A.* (ENRESA) and its funding.

Moreover, in order to complete the legislative, regulatory and organizational framework in accordance with the Directive, this Royal Decree refers to certain general principles to be abided by in the management of spent nuclear fuel and radioactive waste, specifies the responsibilities associated with such management, and establishes the regulation and content of the Spanish national program, called the General Radioactive Waste Plan (*Plan General de Residuos Radiactivos*), as well as some aspects relating to the financing of the activities referred to therein, from the enactment of the

sixth additional provision of the Law 54/1997, of 27 November, on the Electricity Sector, declared in force by Law 24/2013, of 26 December, on the Electricity Sector, and regulating the so-called Fund for financing the activities of the Plan. In particular, the Royal Decree, in accordance with the provisions of the Directive, reconciles attributing the primary or principal responsibility for these materials to whoever produces them or holds the corresponding licence, with the ultimate responsibility which lies with the State and is embodied, among other things, in its classification – which was already made explicit in Law 25/1964 of 29 April – of the management as an essential public service reserved for the State.

In addition, the Regulation on nuclear and radioactive facilities, approved by Royal Decree 1836/1999, of 3 December, incorporates a new licence for decommissioning and closure for facilities for disposal of spent nuclear fuel and radioactive waste, and includes the obligation to provide proportionate guarantees to cover costs and contingencies that may arise from the processes of decommissioning and closure of nuclear facilities.

Furthermore, the above-mentioned Regulation is amended in order to clarify that the declaration of cessation of activity requires an operating permit setting out the conditions with which the activities conducted at the facility must comply until the decommissioning licence is granted, introducing the possibility of its renewal after such cessation, when this has been due to reasons unrelated to nuclear safety or radiation protection.

Moreover, this Royal Decree incorporates certain amendments to Royal Decree 243/2009, of 27 February, governing the supervision and control of shipments of radioactive waste and spent nuclear fuel between Member States or coming from or bound for outside the Community, in order to clarify its wording.

This Royal Decree has been informed by the Nuclear Safety Council and by the Environmental Advisory Council and the economic actors of the industry and social stakeholders and the Autonomous Regions have been consulted during its preparation. It has also been submitted to the procedure for public participation in accordance with the provisions of Law 27/2006, of 18 July, governing rights to information access, public participation and access to justice in matters of the environment.

This Royal Decree has been prepared under Article 94 of Law 25/1964 of April 29, which authorizes the government "to establish the necessary Regulations for the implementation and development thereof".

Moreover, according to the provisions of Article 33 of the Treaty establishing the European Atomic Energy Community (Euratom), this Royal Decree, during its processing as a draft law, has been communicated to the Commission of the European Union.

By virtue thereof, at the proposal of the Minister for Industry, Energy and Tourism, with the prior approval of the Minister of Finance and Public Administration, in agreement with the State Council and after deliberation by the Council of Ministers at its meeting of 21 February 2014,

I ORDER:

*Article 1. Purpose and scope.*

1. The purpose of this Royal Decree is to govern the responsible and safe management of spent nuclear fuel and radioactive waste from civilian activities, in all its

stages, from production to disposal, in order to avoid imposing undue burdens on future generations, as well as the governance of some aspects of the financing of these activities, in compliance with the Community framework.

2. The following are excluded from the scope of this Royal Decree:

- a) Waste from the extractive industries which may have a radioactive content and be included within the scope of the Royal Decree 975/2009 of 12 June on the management of waste from extractive industries and the protection and rehabilitation of areas affected by mining activities, when they are not deemed radioactive waste, and
- b) Discharges to the environment that have been licensed.

## Article 2. *Definitions*

For the purposes of this Royal Decree the following definitions shall apply:

- a) "Disposal": the emplacement of radioactive waste or spent nuclear fuel in a facility, without the intention of retrieval.
- b) "Storage": the emplacement of radioactive waste or spent nuclear fuel in a facility with the intention of retrieval.
- c) "Licence": any and all licences granted by the Spanish authorities to carry out any activity related to the management of spent nuclear fuel or radioactive waste, or to confer responsibility for siting, design, construction, commissioning, operation, decommissioning or closure of a spent nuclear fuel management facility or a radioactive waste management facility.
- d) "Closure": the completion of all operations at some time after the emplacement of spent nuclear fuel or of radioactive waste in a disposal facility; this includes the final engineering or other work required to bring the facility to a condition that will be safe in the long term.
- e) "Spent nuclear fuel": nuclear fuel that has been irradiated in and permanently removed from a reactor core. Spent nuclear fuel can either be considered as a usable resource that can be reprocessed or be destined for disposal if regarded as radioactive waste.
- f) "Radioactive waste management": all activities that relate to handling, pretreatment, treatment, conditioning, storage or disposal of radioactive waste, excluding off-site transportation.
- g) "Spent nuclear fuel management": all activities that relate to the handling, storage, reprocessing or disposal of spent nuclear fuel, excluding off-site transportation.
- h) "Disposal facility": any facility the primary purpose of which is the disposal of radioactive waste.
- i) "Spent nuclear fuel management facility": any facility the primary purpose of which is spent nuclear fuel management.
- j) "Radioactive waste management facility": any facility the primary purpose of which is radioactive waste management.
- k) "Reprocessing": any activity or process the purpose of which is to extract fissile and fertile materials from spent nuclear fuel for further use.
- l) "Radioactive waste": pursuant to the provisions of Article 2 (9) of Law 25/1964 of 29 April on nuclear energy, any waste product or material, for which no use is foreseen, that contains or is contaminated with radionuclides at concentrations or levels of activity above those established by the Ministry of Industry, Energy and Tourism, pursuant to a report from the Nuclear Security Council.

m) "Licence holder": any natural or legal person having overall responsibility for any activity or facility related to the management of spent nuclear fuel or radioactive waste as specified in a licence.

### *Article 3. General principles*

Within the scope of this Royal Decree, the general principles set out in Law 25/1964, of 29 April, as well as the following principles, shall apply:

**a)** The production of radioactive waste shall be reduced to the minimum reasonably possible, both in activity and volume, by applying appropriate design measures and adequate decommissioning and operating practices, including recycling and reuse of materials.

**b)** The interdependence of all stages of the production and management of spent nuclear fuel and radioactive waste shall be taken into account.

**c)** Spent nuclear fuel and radioactive waste shall be safely managed, including long-term with passive safety systems, this being understood as safety based on an intrinsically safe design with components whose functionality is ensured by physical principles that are not dependent on external energy.

**d)** The cost of the management of spent nuclear fuel and radioactive waste shall be borne by those who have created these materials, except as provided for in the sixth additional provision of Law 54/1997, of 27 November, on the Electricity Sector, declared in force by Law 24/2013, of 26 December, on the Electricity Sector.

**e)** The measures for the safe management of spent nuclear fuel and radioactive waste shall be applied using a graded approach procedure, so that the level of analysis, documentation and action is proportional to the magnitude of the risks involved, the relative importance to safety, the purpose and the characteristics of the facility or activity and any other factor deemed relevant.

**f)** A decision-making process shall be used based on empirical evidence and documented at all stages of management of spent nuclear fuel and radioactive waste.

### *Article 4. Responsibility for spent nuclear fuel and radioactive waste.*

1. The primary responsibility for spent nuclear fuel and radioactive waste shall be borne by those who have produced it or, if applicable, by the licence holder to whom responsible for this has been entrusted, in the circumstances provided for by Law 25/1964 of 29 April, and Royal Decree 1836/1999 of 3 December, approving the Regulation on Nuclear and Radioactive Facilities.

2. Producers of the materials or holders of the licences to which the preceding paragraph refers shall set up and implement integrated management systems, including quality assurance, which give due priority to safety in the overall management of spent nuclear fuel and radioactive waste, and can be subject to periodic verification.

3. The management of spent nuclear fuel and radioactive waste and the decommissioning and closure of nuclear installations are an essential public service, title to which is reserved to the State, without prejudice to the responsibilities corresponding to the producers of these materials or to the holders of licences who have been entrusted with this responsibility, in accordance with the preceding paragraphs.

4. The State will take over the title to spent nuclear fuel and radioactive waste once

its disposal has occurred. It shall also assume the monitoring of the definitive disposal facilities after closure thereof.

#### Article 5. *General Radioactive Waste Plan.*

1. Under the provisions of Article 38 bis (2) of Law 25/1964, of 29 April, the Government shall establish the national program and policy on the management of radioactive waste, including spent nuclear fuel, and the decommissioning and closure of nuclear installations, by means of the approval of the General Radioactive Waste Plan (*Plan General de Residuos Radiactivos*). This plan will be approved by the Government, at the proposal of the Minister of Industry, Energy and Tourism, after a report from the Nuclear Safety Council and after hearing the Autonomous Regions on spatial planning and the environment. The approved Plan will then be put to Parliament.

2. The Plan shall contain the strategies, actions required and technical solutions to be implemented in Spain in the short, medium and long term, aimed at the responsible and safe management of spent nuclear fuel and radioactive waste, the decommissioning and closure of nuclear facilities and the other activities related to the above, including economic and financial forecasts and the measures and instruments needed to carry them out.

3. The Plan shall be regularly reviewed, taking into account scientific and technical progress, experience acquired, and recommendations, lessons and best practices derived from the peer review process.

4. Also, when drawing up the Plan, public participation shall be encouraged, in the terms provided in Law 27/2006, of 18 July, governing the rights of access to information, public participation and access to justice in environmental matters and Law 21/2013, of December 9 on environmental assessment.

#### Article 6. *General Radioactive Waste Plan Contents.*

The General Radioactive Waste Plan shall include:

a) The general policy objectives of management of spent nuclear fuel and radioactive waste, including the policy of decommissioning and closure of nuclear facilities.

b) The significant steps and schedules to be met in view of the overall goals.

c) An inventory of all spent nuclear fuel and radioactive waste, as well as estimates of future amounts, including from decommissioning. This inventory shall clearly indicate the siting and amount of spent nuclear fuel and radioactive waste, according to a classification that takes into account the final management scheduled for the same.

d) The concepts or plans and technical solutions for the management of spent nuclear fuel and of radioactive waste from production to disposal, including its transport, as well as the decommissioning and closure of nuclear facilities.

e) The concepts or plans for the post-operational phase of a disposal facility, indicating the time period during which the relevant controls are retained, and the means to be employed to preserve knowledge of the facility in the long term.

f) The research, development and demonstration activities that are needed in order to implement solutions for the management of the spent nuclear fuel and radioactive waste, as well as for carrying out the decommissioning and closure of nuclear facilities.

g) Responsibilities for the implementation of the General Radioactive Waste Plan

and key performance indicators to monitor the progress of that implementation.

h) An assessment of the costs of the General Radioactive Waste Plan and the basis and assumptions on which this assessment is based, which must include a profile over time.

i) The applicable financing scheme.

j) Public participation and transparency criteria regarding the management of spent nuclear fuel and radioactive waste, so that workers and the public are provided with the necessary information on such management.

k) Where appropriate, agreements with the Member States or third countries on the management of spent nuclear fuel or of radioactive waste, including the use of disposal facilities.

#### *Article 7. Financing of the General Radioactive Waste Plan activities.*

1. The financing of the General Radioactive Waste Plan activities will be implemented through the "Fund for the financing of the General Radioactive Waste Plan activities" set up for this purpose, governed by the sixth additional provision of Law 54/1997, of 27 November, declared in force by Law 24/2013, of 26 December.

2. Financial management of the Fund shall be governed by the principles of security, profitability and liquidity, and may take the form of:

a) Marketable fixed-income or equity securities listed on an officially recognized and regular trading organised market open to the public or at least to financial institutions, government debt, mortgage-market securities and other financial assets and instruments.

b) Derivative instruments for the structuring, transformation or hedging of investment transactions in the financial investment portfolio.

c) Deposits at financial institutions, creditors' rights and loans that must be formally executed in a public document or by policy before a Notary Public.

d) Real estate.

e) Foreign securities listed on foreign exchanges or in organized markets.

f) Any other investment instrument or asset that, complying with the principles governing the financial management of the Fund, the Monitoring and Scrutiny Committee referred to in Article 8 deems appropriate.

3. The remuneration of the management activities of the General Radioactive Waste Plan, which will be set annually, shall consist of a remuneration of the capital of the company doing it, equal to the average return on the financial assets integrated into the Fund.

4. For the purposes of the provisions of Article 4 section 8.Two (8.Dos in Spanish) of Law 19/1991 of 6 June on Wealth Tax, where the Fund management investments take the form of financial assets, these shall be deemed held by ENRESA in order to comply with legal and regulatory obligations.

#### *Article 8. Committee for monitoring and scrutiny of the Fund for the financing of the General Radioactive Waste Plan activities.*

1. The monitoring, scrutiny and classification of temporary investments relating to

the Fund's financial management shall be carried out by the Committee for monitoring and scrutiny, under the Ministry of Industry, Energy and Tourism through the State Secretariat for Energy which, chaired by its titleholder, consists of the General Comptroller of the State Administration, the Undersecretary of Economy and Competitiveness, the Secretary General of the Treasury and Financial Policy and the Director General for Energy Policy and Mines, with the General Sub-Director for Nuclear Energy acting as secretary.

2. The Committee's monitoring and control functions are:

- a) To develop criteria for the composition of the Fund's assets
- b) To monitor the financial investments, checking the implementation of the principles set out in Article 7 (2).
- c) To prepare biannual reports, covering the status of the Fund and of the investments corresponding to its financial management, as well as the classification it merits, for the Committee, setting out the observations it deems appropriate. This shall be sent to the Ministers of Industry, Energy and Tourism, Economy and Competitiveness and Finance and Public Administration.

3. Notwithstanding the provisions of this Royal Decree, the functioning of the Committee shall be as provided for in Chapter II of Title II of Law 30/1992, of 26 November, on the Legal Regime of Public Administrations and the Common Administrative Procedure.

*Article 9. Purpose and functions of the National Radioactive Waste Company (Empresa Nacional de Residuos Radiactivos, S. A., "ENRESA").*

1. Pursuant to the provisions of Article 38 bis (1) of Law 25/1964, of 29 April, the *Empresa Nacional de Residuos Radiactivos, S.A. (ENRESA)* is entrusted with the management of radioactive waste and spent nuclear fuel and the decommissioning and closure of nuclear facilities.

2. ENRESA shall be deemed the owner of its facilities for spent nuclear fuel and radioactive waste management for the purposes specified in the law applicable to nuclear and radioactive facilities. ENRESA shall also act as the titleholder of any other activities that it carries out for those activities which establish such status.

3. ENRESA shall carry out, for the fulfilment of its purposes, the following functions:

a) Treating and conditioning the spent nuclear fuel and radioactive waste, without prejudice to the responsibilities that correspond to the producers of these materials or to the licence holders who have been entrusted with this responsibility.

b) Searching for sites, designing, constructing and operating facilities for the storage and disposal of the spent nuclear fuel and radioactive waste.

c) Developing systems to ensure the safe management of spent nuclear fuel and radioactive waste in its storage and disposal facilities.

d) Establishing systems for the collection, transfer and transport of spent nuclear fuel and radioactive waste.

e) Developing and managing the National Spent Nuclear Fuel and Radioactive Waste Inventory. This inventory will continue to include the spent nuclear fuel and radioactive waste disposed of, after the closure of the facility in which they are deposited.

f) Adopting safety measures for the transport of spent nuclear fuel and radioactive waste, pursuant to the provisions of specific regulations on the transport of dangerous goods and as may be determined by the authorities and agencies with competent jurisdiction.

g) Managing the operations relating to the decommissioning and closure of nuclear and, where appropriate, radioactive facilities.

h) Acting, in the event of nuclear or radiological emergencies, in the manner and circumstances required by the authorities and agencies with competent jurisdiction.

i) Establishing training plans and research and development plans within the framework of the State Plan for Scientific and Technical Research and Innovation, covering the needs of the General Radioactive Waste Plan and enabling the acquiring, maintenance and continued development of the necessary knowledge and skills.

j) Performing the necessary technical and economic-financial analyses that take into account the deferred costs derived from its tasks in order to establish the corresponding economic needs.

k) Managing the Fund for financing of the General Radioactive Waste Plan activities.

l) Any other activity required in order to perform the above tasks.

4. For the purposes of the provisions of Article 5 (1), ENRESA shall submit, every four years or when required to do so by the Ministry of Industry, Energy and Tourism, a revision of the General Radioactive Waste Plan.

#### *Article 10. Control of actions and plans of ENRESA.*

Pursuant to the provisions of Article 38 bis (2) of Law 25/1964, of 29 April, and for the purposes of verifying compliance with the General Radioactive Waste Plan, ENRESA shall develop and shall send to the Ministry of Industry, Energy and Tourism, which is entrusted with the strategic direction and monitoring and control of actions and plans of ENRESA, both of a technical and economic nature, through the Secretariat of State for Energy, the following documents:

(a) During the first six months of each year:

1. A report including the technical and economic aspects of the activities of the previous year, and the degree of compliance with the relevant budget.

2. An updated economic and financial study of the cost of the activities referred to in the General Radioactive Waste Plan and to what extent the existing financial mechanisms are adequate for such cost.

b) Before 30 November each year, a technical-economic justification of the annual budget to the following year, and its forecast for the four following years, pursuant to the provisions of the updated economic-financial study of the cost of the activities referred to in the General Radioactive Waste Plan. In the exceptional event that it is necessary to bear costs not envisaged by the above-mentioned economic-financial study, the corresponding justification must be sent in advance.

c) During the month following each calendar quarter, a budget monitoring report for that quarter.

*Article 11. Technical and administrative acceptance specifications.*

1. Holders of nuclear and radioactive facilities will be required to sign the technical and administrative acceptance specifications for its spent nuclear fuel and radioactive waste, with a view to its collection and subsequent management by ENRESA.

2. This same obligation shall extend to holders of installations or activities not subject to the licensing regime of the legislation on nuclear power, in which radioactive waste may be produced.

3. These specifications shall establish the term thereof, which shall run until the end of lifetime of the facilities, including the decommissioning and closure of the nuclear facilities and, where appropriate, of the radioactive facilities.

4. Such specifications will have to have been approved by the Ministry of Industry, Energy and Tourism, with the prior report of the Nuclear Safety Council.

*Article 12. Controlling the safety of the management of spent nuclear fuel and radioactive waste.*

1. Pursuant to the provisions of Article 2 of Law 15/1980 of 22 April, creating the Nuclear Safety Council, the Nuclear Safety Council has the responsibility for carrying out the control of safety of the management of spent nuclear fuel and radioactive waste, and in particular the completion of the studies, evaluations and inspections of the plans, programs and projects necessary for all phases of such management.

2. For the purposes stated in the preceding paragraph, in the first quarter of each year ENRESA shall send to the Nuclear Safety Council information about the activities carried out in the previous year and the forecasts for the current year in relation to the provisions of the General Radioactive Waste Plan. Also, in accordance with the general principle of Article 3 b), information on the interdependencies, agreements and interfaces of powers with the holders of other facilities managing spent nuclear fuel and radioactive waste during the information period referred to will be included.

3. The licensing process for spent nuclear fuel and radioactive waste management facilities requires the safety demonstration or study of the different facility life cycle phases, as provided in the Regulations on nuclear and radioactive facilities. The safety demonstration shall be commensurate with the complexity of operations and the magnitude of the associated risks of the facility or activity, in accordance with the Instructions, Circulars and Guidelines of a technical nature relating to nuclear safety and radiation protection, issued by the Nuclear Safety Council.

*Article 13. Disposal of radioactive waste outside Spain.*

1. Radioactive waste produced in Spain shall be disposed of in the country, unless, at the time of transfer thereof, an agreement has entered into force between the Spanish State and another Member State or third country agreement that takes into account the criteria established by the Commission in accordance with Article 16 (2) of Directive 2006/117/Euratom, the purpose of which is the use of a disposal facility in one of them.

2. For the purposes of the preceding paragraph, before the final transfer of radioactive waste to a country which is not a Member State of the European Union, the natural or legal person responsible for it shall notify the Directorate General for Energy

Policy and Mines, in order for it to inform the European Commission of the content of the agreement and take reasonable steps to ensure that:

a) The destination country has in force an agreement with the European Atomic Energy Community to cover the management of spent nuclear fuel and radioactive waste or is a party to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.

b) The destination country has programs for management and disposal of radioactive waste whose objectives represent a high level of safety and are equivalent to those laid down in Council Directive 2011/70/Euratom of 19 July 2011, establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste.

c) The disposal facility in the destination country has been licensed to receive the shipment of radioactive waste, is operational before the shipment, and is managed in accordance with the requirements established in the program for management and disposal of radioactive waste of that destination country.

3. This Article shall not apply to the repatriation of disused sealed sources sent to a supplier or manufacturer and to the transfer of spent nuclear fuel from research reactors to a country that provides or manufactures research reactor fuels, taking into account the applicable international agreements.

*Article 14. Notifications and reports to the European Commission.*

1. The Ministry of Industry, Energy and Tourism shall send the General Radioactive Waste Plan, and any subsequent revisions thereof, to the European Commission.

2. The Ministry of Industry, Energy and Tourism shall report to the European Commission on the implementation of Council Directive 2011/70/Euratom of 19 July 2011, before 25 August 2015 and then every 3 years.

*Article 15. Periodic self-evaluations.*

1. The Ministry of Industry, Energy and Tourism and the Nuclear Safety Council shall periodically, and at least every ten years, organize the conducting of self-assessments of its legislative, regulatory and organizational framework for the management of spent nuclear fuel and radioactive waste, of the regulatory authorities with competent jurisdiction, and of the General Radioactive Waste Plan, along with the application thereof, and shall invite an international peer review thereof.

2. The Ministry of Industry, Energy and Tourism shall notify the European Commission and the other Member States of the European Union of the result of the above-mentioned review, which shall be made public.

*Single additional provision. Other radioactive waste.*

By agreement of the Council of Ministers, upon a proposal from the Ministry of Industry, Energy and Tourism and of the Economy and Competitiveness, and after a report from the Nuclear Safety Council, surveillance and control measures may be established by ENRESA in relation to that radioactive waste that could arise as a result of

exceptional circumstances, originating in facilities, equipment, companies or activities not subject to the licensing regime of legislation relating to nuclear power.

Single transitional provision. *Standard contracts approved prior to the entry into force of this Royal Decree.*

For the purposes of Article 11, standard contracts approved prior to the entry into force of this Royal Decree shall be deemed technical and administrative acceptance specifications.

Single provision of repeal. *Repeal of legislation.*

Royal Decree 1349/2003 of 31 October on the regulation of the activities of the National Radioactive Waste Company (*Empresa Nacional de Residuos Radiactivos, S.A., "ENRESA"*), and the funding thereof, as well as all provisions of equal or lower rank that contradict or conflict with the provisions of this Royal Decree, are hereby repealed.

First primary provision. *Amendment of the Regulation on Nuclear and Radioactive Facilities, approved by Royal Decree 1836/1999 of 3 December.*

The Regulation on Nuclear and Radioactive Facilities, approved by Royal Decree 1836/1999, of 3 December, is amended as follows:

One. Article 5 (2) shall read as follows:

"2. In the case of renewal of nuclear facility licences, the Nuclear Safety Council report must be submitted to the Ministry of Industry, Energy and Tourism at least one month before the expiry date of the current licence. This term shall not apply in the case of renewal of the operating licence after the cessation referred to in Article 28 (1)."

Two. Article 12 1.c) shall read as follows:

"c) Operating licence: allows the licence holder to load nuclear fuel or introduce nuclear substances into the facility, to carry out the nuclear testing program and to operate the facility under the conditions laid down in the licence. It will be granted provisionally at first, pending satisfactory completion of the nuclear tests.

Furthermore, and without prejudice to any renewal pursuant to Article 28 (1), this licence allows the licence holder, after the cessation of the activity for which the facility was conceived and on the terms established by the declaration of cessation of activity, to carry out the operations imposed by the authorities prior to obtaining the decommissioning licence or obtaining the decommissioning and closure licence in the case of disposal facilities for spent nuclear fuel or radioactive waste."

Three. A new paragraph g) is added to Article 12 (1), and the following paragraphs of this section are renumbered, which read as follows:

"g) Decommissioning and closure licence: In facilities for disposal of spent nuclear fuel and radioactive waste, this allows the licence holder to initiate final engineering

works and other measures required to ensure the long-term safety of the storage system, and the decommissioning of ancillary facilities so decided, allowing ultimately the delimitation of the areas, if any, that must be subject to radiation or any other control and monitoring for a specific period of time, and the release from control of the remaining areas of the site. The decommissioning and closure process shall end in a declaration of closure issued by the Ministry of Industry, Energy and Tourism, after a report from the Nuclear Safety Council.

The nuclear safety and radiation protection aspects during decommissioning and closure of the facility and during the post-closure control and monitoring stage, including the scope and content of the demonstration or study of safety at every stage, shall be governed by Preparatory Investigation of the Nuclear Safety Council.

Additionally, the following shall require a licence:

h) Storage of nuclear material in a facility under construction that has no operating licence.

i) A change in ownership of nuclear facilities. The new owner must prove sufficient legal, technical and economic and financial capacity to carry out the activities covered by the licence.

The licences referred to in the preceding paragraphs shall be obtained after a report of the Nuclear Safety Council as provided in these rules."

Four. Paragraphs 2, 3 and 4 of Article 12 are worded as follows:

"2. The nuclear facilities referred to in paragraphs b) and d) of Article 11 of this Regulation, except for facilities for disposal of spent nuclear fuel and radioactive waste, may simultaneously request the preliminary licence and the construction licence.

3. Prior to the granting of the licences set out in section 1 of this Article, except those referred to in sub-sections e) and h) of such section, the corresponding documentation shall be transferred to the autonomous region, for a period of one month, for observations, in accordance with Article 4.2 of this Regulation.

4. The Minister of Industry, Energy and Tourism shall have responsibility for granting the licences contained in section 1 of this Article, except those referred to in sub-sections d), e) and h) which are the responsibility of the Director General for Energy Policy and Mines."

Five. Article 20 j) shall read as follows:

"j) Decommissioning and closure forecasts. This shall describe, among others, those relating to the final management of radioactive waste produced and the study of the cost and the economic and financial forecasts to ensure such decommissioning and closure. For these purposes, the applicant must provide proportionate guarantees covering the costs and contingencies that may arise from the processes of decommissioning and closure of the facility, including in the event of insolvency, cessation of activity or any other contingency, specifying the amounts of these guarantees and the way in which they will be paid, except for those facilities for which the funding of their decommissioning and closure is provided under the sixth additional provision of Law 54/1997 of 27 November, of the Electricity Sector, declared in force by

Law 24/2013, of 26 December, of the Electricity Sector."

Six. A new paragraph is added at the end of Article 20, which shall read as follows:

"The guarantee required in sub-section j) of this Article shall be established in advance of the granting of the operating licence. The Directorate General for Energy Policy and Mines, following a report from the Nuclear Safety Council, may authorize the updating of this guarantee if circumstances or changes occur in the facility that could have a significant impact on the decommissioning and closure thereof, or in accordance with the works already carried out in relation to these activities. This guarantee shall be independent of any other guarantee required by environmental or mining legislation."

Seven. Article 28 (1) shall read as follows:

"1. The holder of an operating licence shall notify the Ministry of Industry, Energy and Tourism, at least one year ahead of schedule, of its intention to cease the activity for which the facility was designed. Both in this case, and when the cessation of activity is due to some other circumstance, the Minister of Industry, Energy and Tourism, following a report from the Nuclear Safety Council, shall declare the cessation of such activity, specifying in the operating licence the conditions which the activities conducted at the facility must comply with from that time and the term within which the licence for decommissioning and closure must be applied for.

This cessation of activity shall be definitive, from the very date on which its declaration takes effect, when it is for reasons of nuclear safety or of radiation protection. When such cessation of activity has occurred for other reasons, the licence holder may apply for renewal of the operating licence within one year from the date on which the cessation declaration takes effect. The procedure to be followed in this case shall be that which is established in order to request a renewal of the operating licence, attaching the updating of the relevant documents, to which the documentation or additional requirements that are specified in each case shall be added, taking into account the specific situation of the facility, scientific and technological advances, the applicable rules and the in-house and other accumulated operational experience during the operation of the facility, as well as other aspects relevant to safety. After the expiry of one year without the application having been made, the declaration of cessation shall likewise become definitive."

Eight. Article 36 (1) shall read as follows:

"1. Radioactive facilities of the nuclear fuel cycle shall require the following licences: preliminary licence, construction licence, operating licence, decommissioning licence and declaration of closure or decommissioning and closure licence and declaration of closure and, where appropriate, licence to amend and change titleholder."

Nine. Article 37 shall read as follows:

"The application, processing and granting of preliminary licences, construction permits, operating, modification, change of ownership, decommissioning, decommissioning and closure, declaration of closure and declaration of closure licences

for radioactive facilities of the first category of the nuclear fuel cycle shall be subject to the provisions of Title II of this Regulation, governing the licensing of nuclear facilities, with the adaptation of the corresponding documents to the special characteristics of these facilities."

Ten. A new sixth transitional provision is added, which shall have the following wording:

*"Sixth transitional provision. Nuclear facilities in which the declaration of definitive cessation of operations has been made.*

All those facilities that, upon the entry into force of Royal Decree 102/2014 of 21 February, for the responsible and safe management of spent fuel and radioactive waste, have obtained the declaration of definitive cessation of operations for reasons apart from nuclear safety or radiation protection, may request, through the established procedure, the renewal of the operating licence, on the terms provided in the new wording of Article 28 (1) of this Regulation, and provided that the time limit of one year from the obtaining of the declaration of cessation has not expired."

*Second final provision. Amendment of Royal Decree 243/2009, of 27 February, on the supervision and control of shipments of radioactive waste and spent nuclear fuel between Member States originating from or with destination outside of the Community.*

Royal Decree 243/2009, of 27 February regulating the supervision and control of shipments of radioactive waste and spent nuclear fuel between Member States or originating in or with destination outside of the Community is amended as follows:

One. Article 9 shall read as follows:

"Any holder of radioactive waste or spent fuel intending to make an intra-Community shipment from Spain of such material, or to arrange such shipment, shall require a licence from the Directorate General for Energy Policy and Mines, following a favourable report from the Nuclear Safety Council. For these purposes, the applicant must complete section A-1 or B-1, as appropriate, of the standard document referred to in Article 5 and forward the application to such Directorate General.

Subsequently, before the transfer is made, the licence holder must complete section A-5 or B-5 of the standard document. This document must accompany the shipment together with the documents of sections A-1 and A-4a or B-1 and B-4a, and finally section A-6 or B- 6 of the standard document will be attached."

Two. Article 16 a) shall read as follows:

"a) The recipient must submit to the Directorate General for Energy Policy and Mines an application for a licence, for which it shall make use of section A-1 or B-1, as appropriate, of the standard document. The application may be for more than one shipment, provided the conditions laid down in Article 10 are met.

Subsequently, before the shipment is made, the licence holder shall complete section A-5 or B-5 of the standard document. This document must accompany the shipment together with the documents of sections A- 1 and A-4a or B-1 and B-4a, and

finally section A-6 or B-6 of the standard document shall be attached."

Three. Article 17 (1) a) shall read as follows:

"a) The natural or legal person responsible for managing the shipment in Spain shall submit to the Directorate General for Energy Policy and Mines an application for a licence, for which section A-1 or B-1, as appropriate, of the standard document shall be used.

Subsequently, before the shipment is made, the licence holder shall complete section A-5 or B-5 of the standard document. This document must accompany the shipment together with sections A-1 and A-4a or B-1 and B-4a, and finally section A-6 or B-6 of the standard document shall be attached."

Four. Article 18 a) shall read as follows:

"a) The holder shall submit to the Directorate General for Energy Policy and Mines a licence application, for which it shall make use of section A-1 or B-1, as appropriate, of the standard document.

Subsequently, before the shipment is made, the licence holder shall complete section A-5 or B-5 of the standard document. This document must accompany the shipment together with sections A-1 and A-4a or B-1 and B-4a, and finally section A-6 or B-6 of the standard document shall be attached."

Five. Section 33 c) of the "Explanatory Notes of each point of the sections A-1 to A-6 and B-1 to B-6 of the standard document" contained in the annex to Royal Decree 243/2009 of 27 February, concerning the standard document for the monitoring and control of shipments of radioactive waste and spent fuel document shall read as follows:

"c) If the licence refers to various shipments of the MM or IM types, the recipient must complete Section 6 after each shipment (after procuring for this purpose several blank copies of section 6) and send this section directly to the competent authority of the destination Member State. The recipient must attach Section 5 for the same shipment."

Third final provision. *Competent jurisdiction.*

This royal decree is issued under the provisions of Article 149.1.13.a and 25.a of the Constitution, which attribute competent jurisdiction to the State on the rules for and coordination of general planning of economic activity and rules on mining and energy arrangements, respectively.

Fourth final provision. *Incorporation of EU law.*

This Royal Decree incorporates into Spanish law Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent nuclear fuel and radioactive waste.

Fifth final provision. *Enabling implementation.*

The Minister of Industry, Energy and Tourism, within the scope of his/her powers, may enact the appropriate provisions for the implementation and application of this Royal Decree.

Sixth final provision. *Entry into force.*

This Royal Decree shall enter into force on the day following its publication in the "Official State Gazette".

Given in Madrid, on 21 February 2014.

JUAN CARLOS R.

The Minister of Industry, Energy and Tourism,  
JOSÉ MANUEL SORIA LÓPEZ

<http://www.boe.es>

OFFICIAL STATE GAZETTE DL: M-1/1958 - ISSN: 0212-033X