August 02, 1998

Mr. Mark W. Frei
Acting Deputy Assistant Secretary
for Waste Management
Office of Environmental Management
U.S. Department of Energy
Washington, DC 20585

Dear Mr. Frei:

I am writing in response to your letter dated June 25, 1998, in which you forwarded the draft guidance (DOE G 435.1) developed by U.S. Department of Energy (DOE) staff for making incidental waste classification determinations at the various DOE sites that manage inventories of high-level waste. Representatives of our respective staffs met on July 2, 1998, to discuss the draft guidance, and some preliminary U.S. Nuclear Regulatory Commission staff comments on the guidance were provided to DOE staff at that meeting. The purpose of this letter is to provide the staff's written comments on the DOE guidance as a follow-up to the July 2 meeting. The comments, both general and specific in nature, are provided in Enclosure 1. Some additional comments are noted on the enclosed marked-up pages of the guidance (Enclosure 2). The staff would like to have the opportunity to review the next iteration of the guidance after DOE's consideration of the comments provided herein. Lastly, regarding the planned future incidental waste classification determinations that DOE anticipates will be needed at the various DOE sites, the staff would like to have a forecast and estimated schedule of those determinations that may necessitate staff review.

If you have any questions about the enclosed comments, please contact Rick Weller (301-415-7287) or Jennifer Davis (301-415-5874) of my staff.

Sincerely,

Original Signed By

John T. Greeves, Director
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Enclosures: As stated (2)

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

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U.S. NUCLEAR REGULATORY COMMISSION STAFF COMMENTS ON DOE G 435.1

General Comments

1. The U.S. Nuclear Regulatory Commission (NRC) staff agrees with the U.S. Department of Energy (DOE) that it is appropriate to make incidental waste classification determinations by either the "citation" process or the "evaluation" process.

2. With respect to the citation process, the staff notes that the terms "high-level radioactive waste" (HLW) and "incidental waste" embody certain jurisdictional principles. In particular, although NRC has jurisdiction over certain DOE HLW facilities under the Energy Reorganization Act of 1974 (ERA), it does not have jurisdiction over DOE incidental waste activities as a general matter. Further, the Commission has construed HLW to mean HLW as that term is used in 10 CFR Part 50, Appendix F., which defines HLW by the source of the material rather than by its hazardous characteristics. See "Definition of 'High-Level Radioactive,'" 52 FR 5992. As used in Appendix F, HLW does not include incidental wastes, such as ion exchange beds, sludges, and contaminated laboratory items, clothing, tools, and equipment. Further, the definition of HLW does not include radioactive hulls (cladding hulls) and other irradiated and contaminated fuel structural hardware. Accordingly, consistent with the provisions of ERA, NRC does not have regulatory jurisdiction over the aforementioned incidental wastes. In this regard, the staff recognizes that DOE proposes to determine the appropriate disposition of several of the incidental waste types by consideration of their potential long-term hazards to public health and safety. Specifically, DOE would utilize the "evaluation" process for such wastes as ion exchange beds, sludges and others to assist in waste management decision-making. Although it lacks jurisdictional authority, as discussed above, NRC is not opposed to DOE management and disposal of these incidental wastes in a manner which would provide added protection of public health and safety, including disposal in a deep geologic repository. The staff recommends that DOE's guidance should be modified to take the foregoing principles and discussion into account.

3. The guidance indicates that it is DOE's intent to submit all waste classification determinations performed by the evaluation process to the NRC for review. The staff does not believe that this is necessary for all evaluations. Consistent with the guidance provided in the March 2, 1993, letter from R. Bernero/NRC, to J. Lytle/DOE, DOE need only communicate, to NRC, its concerns related to those evaluations which indicate that wastes may be subject to NRC licensing. For other evaluations that indicate the wastes in question are clearly incidental, based on an appropriate application of, and conformance with, the incidental waste classification criteria specified in the March 1993 Bernero letter, there should be no need for NRC review. Of course, DOE should document all evaluations with good record keeping, under an adequate quality assurance process, and with analyses that support the evaluation results and conclusions. Further, all evaluations and their supporting documentation should be adequate for review, in the event the need should arise for the

staff to audit DOE's evaluations, including those evaluations in which DOE determines the waste stream of interest is clearly incidental.

4. The guidance should be modified to indicate that DOE has both the responsibility and the authority for making initial determinations of the appropriate classification of the waste of interest. Further, the guidance should avoid phraseology that delineates responsibilities for the NRC. Notwithstanding this comment, the staff recognizes its role in assisting DOE in the appropriate classification of waste streams that may be subject to NRC licensing, and the staff will work with DOE to define the appropriate disposition of these wastes.

5. DOE should indicate how the guidance for waste classification determinations applies to DOE contractors and their associated radwaste management activities (e.g., activities by the Hanford Tank Waste Remediation System contractor).

6. The guidance uses different terms, such as "no objection," "acceptance from the NRC," and "agreement," to charactize the desired outcome from the staff's review of DOE's waste classification determinations. The guidance should use consistent terminology, and the term "agreement" best describes the result of a staff evaluation, agreeing with DOE's classification of a waste stream or the methodology used by DOE for classification.

Specific Comments

1. On page II-4 (Determination Processes), the text should be modified to indicate that the evolution process can result in four waste types: low-level, mixed low-level, transuranic, or high-level waste.

2. On page II-7, in relation to the evaluation process, the guidance should indicate that "key radionuclides" are also those that are important to satisfying the performance objectives of Part 61.

3. On page II-12, Figure 1 (Decision Tree for Waste Incidental to Reprocessing Determination) should be modified to remove cladding hulls as a waste type to be classified by citation (see General Comment 2).

implementation of the process will ensure DOE manages these waste streams within its regulatory authority for disposal.

Discussion: initial waste classification

As discussed in the guidance for DOE M 435.1, Section II.A., Definition of High-Level Waste, certain waste streams produced during the generation of high-level waste may be determined to be non-high-level waste through the waste incidental to reprocessing determination process. As discussed below, the authority to make ~~such~~ determinations resides with the Department, ~~not the Nuclear Regulatory Commission.~~ The processes for making such determinations are included as requirements at DOE M 435.1, Section II.B., and are described below. In conjunction with Section II.B. is a requirement at Section I.2.E.(17), Waste Incidental to Reprocessing, which delineates the responsibilities of the Field Element Manager, the Office of Environmental Management, ~~and the Nuclear Regulatory Commission~~ for making and reviewing such waste incidental to reprocessing determinations. Included in the guidance to this section is the information and analysis necessary to support these determinations.

avoid this kind of phraseology. Guidance is primarily for DOE.

Background: In the Notice of Proposed Rulemaking (*34 FR 8712*, 6/3/69) for Appendix F, 10 CFR 50, "Policy Relating to the Siting of Commercial Fuel Reprocessing Plants and Related Waste Management Facilities," the Atomic Energy Commission noted that the term high-level waste did not include "incidental wastes" resulting from (spent nuclear fuel) reprocessing plant operations. Such incidental wastes included such waste streams as ion exchange beds, sludges, and contaminated laboratory items, clothing, tools, and equipment. Additionally, this category included radioactive hulls and other irradiated and contaminated fuel structural hardware. Although this language concerning incidental waste was deleted from the final Policy (*35 FR 17530-17533*, 11/14/70), the principle of "incidental wastes" has been continually supported by both the Department and the Nuclear Regulatory Commission since the Proposed Rulemaking.

For example, in its Advance Notice of Proposed Rulemaking for the Definition of High-Level Radioactive Waste at 10 CFR 60 (*52 FR 5992 6001*, 2/27/87), the Nuclear Regulatory Commission cited the AEC's use of the term incidental wastes and stated that high-level waste does not include such waste streams. Additionally, the Commission stated (footnote 1, 52 FR 5993) that "incidental wastes generated in further treatment of HLW (e.g., decontaminated salt with residual activities on the order of ..., as described in the Department of Energy's FEIS on long-term management of defense HLW at the Savannah River Plant, DOE/EIS-0023, 1979) would also, under the same reasoning, be outside the Appendix F definition."

More recently, in response to a petition regarding disposal of waste at the Hanford site, the NRC (States of Washington & Oregon: Denial of Petition for Rulemaking, *58 FR 12342-12347*, 3/4/93) commented that:

The NRC staff also indicated that it would prefer to review evaluation process waste stream candidates on a "macro" basis, in lieu of reviewing individual waste streams or waste items. This is interpreted to mean that the NRC would prefer to review an analysis for a group of high-level waste, waste streams that have similar characteristics or will require similar processing to meet the three evaluation, in lieu of individual waste streams or waste items. Such "packaging"of waste streams is expected to make the most efficient use of the NRC staff's resources and to avoid its involvement in each evaluation process determination for each candidate waste stream, or item, within the DOE Complex. Further discussion on this subject is provided below under the evaluation process.

It is not the intent of DOE M 435.1 to create, or support the creation, of a new waste type titled incidental waste or waste incidental to reprocessing. Waste incidental to reprocessing refers to a "process" for identifying waste streams that would otherwise be considered high-level waste due to their sources of generation, which can be managed in accordance with the DOE requirements for transuranic, low-level, or mixed low-level waste, as appropriate. Specifically, once a reprocessing waste stream is determined to not be high-level waste, it is ~~removed from~~ not subject to the NRC's jurisdiction for disposal, and DOE has full regulatory authority for its treatment, storage and disposal. The term "incidental waste" has been used for different purposes and in different context over the years within the DOE complex. The Manual has coined the term "waste incidental to reprocessing" to represent a process for identifying waste streams that are not high-level waste, and are therefore either transuranic, low-level, or mixed low-level waste.

To assist in making waste incidental to reprocessing determinations, Figure 1, has been included in this guidance. This figure is a simple decision tree that provides some examples of wastes and waste streams that are interpreted to be included within each determination process, however, these examples are not all inclusive. It is expected that interpretations and determinations by the DOE sites, and in conjunction with the NRC and DOE-EM, will expand this list of examples. Updates to this guidance are expected to expand this list as well.

Citation Process: The citation process requires that the candidate waste stream be interpreted to be included within the "incidental waste" category of waste streams as defined by the Atomic Energy Commission during the promulgation of 10 CFR 50, Appendix F. Figure 1 includes examples of wastes that have been interpreted to be included within the citation process. Included are:

- high-level waste-contaminated "job wastes," a general category of wastes that are generated during high-level waste transfer, pretreatment, treatment, storage and disposal activities. Included is protective clothing, personal protective equipment (PPEs), work tools, ventilation filter media, and other job-related materials necessary to complete high-level waste management activities;
- sample media (e.g., sampling vials, crucibles, other hardware)

- decontamination media and solutions (e.g., swabs, other "decon" work related materials)
- laboratory clothing, tools, and equipment; and
- fuel structural hardware (e.g., leached fuel hulls and cladding).

Excluded from the list of citation waste examples are high-level waste processing (pretreatment or treatment) ion exchange beds, sludges, and process filter media, although the first two of these were included in the Appendix F promulgation language. These have been excluded from the citation process set of examples because of the potential long-term hazards their disposal may pose. However, they may be candidates for the evaluation process.

The following examples of "filter media" are provided to clarify the use of the term in the citation process examples above:

> *Examples: (1) At Site X the high-level waste pretreatment process uses a filtration process to precipitate Cs-137 from the tank solution. Disposal of the failed (process) filter media from this process as transuranic, low-level, or mixed low-level, using the citation process, is considered inappropriate. However, the filter is a candidate for disposal as low-level, or mixed low-level waste using the evaluation process. (2) The high-level waste storage tanks at this site include a HEPA filtration system. Disposal of the HEPA filters from this system as transuranic, low-level, or mixed low-level waste, using the citation process, is considered appropriate. (3) The same site has an effluent treatment facility (ETF) that treats "overheads" (evaporator distillate) from a high-level waste evaporator. Since these "overheads" are not considered to be high-level waste (there is no carryover of high-level waste to the waste stream) disposition of these failed filters does not need to be subjected to the waste incidental to reprocessing processes. They can be managed as transuranic, low-level, or mixed low-level waste, as appropriate.*

The responsibility of interpreting the Appendix F promulgation language in using the citation process is within the DOE's authority. As delineated in the Chapter I, General Requirements of DOE M435.1, Section I.2.E.(17), the authority to implement the citation process and make these interpretations rests with the DOE Program Office responsible for the management of the waste. In the case of high-level waste this responsibility has been assigned to the Field Element Manager at the DOE Field Office or Operations Office.

Evaluation Process:

As shown in Figure 1, waste streams resulting from the reprocessing of high-level waste that are ~~contaminated with high-level waste and~~ are not interpreted to be included within the citation process can be assessed for compliance with the evaluation process. Examples of wastes streams that are ~~expected~~ anticipated to meet the requirements of the evaluation process include:

- residual tank wastes whose removal is not considered to be technically and economically practical;
- ~~high-level waste~~ contaminated storage, pretreatment, and treatment equipment (e.g., tank mixer/pumps);
- thermocouple trees;
- vitrification melter components;
- process filter media; and
- other process equipment that contain some amounts of ~~high-level~~ waste in the form of slurry, salt or glass.

It is emphasized that the examples provided above are ones that are ~~expected~~ anticipated to be able to meet the three evaluation process criteria. However, any wastes that are determined to meet these criteria must be supported by the necessary information and analysis as described in the guidance for DOE M 435.1, Section I.2.E.(17).

DOE maintains that ~~high-level waste~~ contaminated equipment, components, etc., whose disposal can be demonstrated to not jeopardize the health and safety of the public, worker and the environment can be managed as non-high-level waste providing the waste meets the three evaluation requirements. The three criteria that the waste must are:

(1) *"Have been processed, or will be processed, to remove key radionuclides to the maximum extent that is technically and economically practical."*

Although "key radionuclides" are not defined by the NRC in either the Denial of Petition for Rulemaking or the letter from Bernero to Lytle, it is generally understood that key radionuclides applies to those radionuclides that are controlled by concentration limits in 10 CFR Part 61.55. Specifically these are: long-lived radionuclides, C-14, Ni-59, Nb-94, Tc-99, I-129, Pu-241, Cm-242, and alpha emitting transuranic nuclides with half-lives greater than five years and; short-lived radionuclides, H-3,Co-60, Ni-63, Sr-90, and Cs-137. Processing to remove these radionuclides to the extent "technically and economically practical" is interpreted to mean that DOE needs to identify the available separation technologies for each of the main radionuclides of interest and evaluate each individually to determine the status of the technology and the radionuclide removal efficiency. These actions need to be documented and supplied to the NRC.

Example: To satisfy criterion #1, Site X identified the available separation technologies for each of the main radionuclides of interest (Cs-137, Sr-90, transuranics, Tc-99, Se-79, C-14, I-129, H-3, and uranium) and individually evaluated each to determine the status of the technology and the radionuclide removal efficiency. Separation processes that were determined to be technically practical were then examined for economic practicality based on a cost per curie

concluded that although the Interim PA is limited in information it does indicate that the Performance Objectives of Part 61 will be met.

Based on the conclusions on each of the three criterion the NRC granted a "provisional agreement" that the waste under question at Site X is "incidental waste" and is, therefore, not subject to NRC licensing authority. This finding was conditional on the NRC staff's review of subsequent PAs and other stipulations described in NRC's letter.

Consistent with the discussions held with the NRC staff on making evaluation process determinations, the high-level waste sites are encouraged to "package" potential evaluation process waste streams in their evaluation criteria analysis. Such packaging is expected to expedite the decision process and make the most efficient use of limited resources at both the NRC and DOE. Following are two examples of packaging:

Example: At Site Y the high-level waste treatment (vitrification) activities are nearing completion and plans for dispositioning the ~~high-level waste~~ contaminated equipment within the pretreatment and treatment processes are being formulated. Analysis indicates that decontamination activities can be held to a minimum if a number of ~~high-level waste~~ contaminated pretreatment and treatment components (mixer/pumps, slurry transfer lines, slurry tanks, melter, process filter media) can be disposed as low-level waste by way of the evaluation process. In lieu of submitting individual analysis for each of contaminated components Site Y submits to the NRC for acceptance, through DOE-EM, a methodology for meeting each of the three evaluation criteria for a package of these components.

Example: At Site Z closure analysis activities are underway for a number of high-level waste tanks. In reviewing the processes for removing the final amounts of high-level waste from the tanks it is concluded that the three evaluation process criteria can be met even if some small quantities y of ~~high-level~~ waste are allowed to remain in the tanks. In lieu of requesting acceptance from the NRC for each tank the Site submits a methodology for meeting each of the three evaluation criteria for a package, or group, of the tanks. Acceptance of this methodology for the group of tanks is gained from the NRC and closure activities, consistent with DOE M 435.1, Section II.U., "Requirements for Closure," proceed for the group of tanks without further communications with the NRC.

The Field Element Manager is responsible for ensuring that the requirements of the evaluation process are met. DOE M 435.1, Section I.2.E.(17), Waste Incidental to Reprocessing, states that the Field Element Manager shall ensure that "the Nuclear Regulatory Commission no longer has a regulatory interest in waste determined incidental to reprocessing through the evaluation

process." This requires the FEM or designee, to meet the requirements of Section II.B. and to gain agreement from the NRC that the waste is not subject to NRC licensing authority. Additionally, the FEM is responsible for ensuring that concurrence from the Office of Environmental Management, specifically the Office of Waste Management, is gained. Guidance to Section I.2.E.(17) provides additional information on the information/analysis required to meet these requirements.

Mixed Waste: DOE M 435.1, Section II.C., "Mixed Waste," imposes the requirement that all high-level waste is to be considered mixed waste, unless demonstrated otherwise. This requirement applies to waste incidental to reprocessing determined wastes as well. Waste that is determined to be non-high-level waste by the application of the waste incidental to reprocessing processes should be considered mixed, unless demonstrated otherwise.

To demonstrate compliance with this requirement, site personnel should be able to show that the citation and evaluation processes are implemented in a defensible manner that ensure the Department is not exceeding its regulatory authority ~~for the management of high-level waste.~~

Supplemental References:

34 FR 8712, Proposed Rule Making, 10 CFR 50, "Licensing of Production and Utilization Facilities, June 3, 1969.

35 FR 17532, Rules and Regulations, 10 CFR 50, "Licensing of Production and Utilization Facilities, November 14, 1970.

DOE/EIS-0023, "Final Environmental Impact Statement: Long-Term Management of Defense High-Level Radioactive Wastes," Savannah River Plant, November, 1979.

52 FR 5992, Advanced Notice of Proposed Rulemaking, 10 CFR 60, "Definition of 'High-Level Radioactive Waste,'" February 27, 1987.

Memorandum, NRC Commissioner, J. R. Curtiss, to J. M. Taylor, Executive Director for Operations, subject: SECY-92-391: Denial of PRM-60-4-Petition for Rulemaking Regarding Classification of Radioactive Waste at Hanford, December 29, 1992.

Memorandum, J. M. Taylor, Executive Director for Operations, to Commissioner Curtiss, subject: Staff Response to Concerns Raised by Commissioner James R. Curtiss on Denial of PRM-60-4-Petition for Rulemaking Regarding Classification of Radioactive Waste at Hanford, January 14, 1993.

I. 2. E. (17) Waste Incidental to Reprocessing.

Ensuring that waste incidental to reprocessing determinations are made by either the "citation" or "evaluation" process. Ensuring, with concurrence from the Office of Environmental Management, that the Nuclear Regulatory Commission ~~no longer has~~ a regulatory interest ~~in~~ waste determined to be incidental to reprocessing through the "evaluation" process.

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Objective:

The objective of this requirement is to ensure that the processes and responsibilities for making waste incidental to reprocessing determinations are understood and implemented.

Discussion:

As discussed in Section II.B., Waste Incidental to Reprocessing, there are certain waste streams that may be generated during the management of high-level waste that may not have to be managed as high-level waste and thus can be managed as another waste type (transuranic, low-level, or mixed low-level). To make such determinations, DOE M 435.1 establishes two processes, the citation process and the evaluation process. These are described in detail in Section II.B and its supporting guidance. In addition, Section II.A, Definition of High-Level Waste, provides assistance in making waste high-level waste determinations.

Determinations

To meet the first part of the requirement, the Field Element Manager or designee should establish a process or method that documents waste incidental to reprocessing decisions. Such a method is required by the evaluation process (see Section II.B.(2)) and is also recommended for the citation process. While the level of formality of the process is left to the discretion of site management, the following elements are considered necessary:

- Organization and Responsibilities: Identification of the site organization that is responsible for making the determinations.
- Procedures: The process should be formalized in procedures. These should include a requirement certifying that the determination processes have been followed correctly.
- Quality Assurance: The determination process should be subject to a quality assurance program that ensures the validity of the information used to make the determinations.
- Document/Records Control: The principal documents that constitute the documentation of the determination process should be controlled and retained.

- Training: At a minimum, the process should require training of personnel that will implement the process (e.g., procedures, Quality Assurance program, document control).

Invoking existing programs (e.g., Quality Assurance program) and processes (e.g., document control) to implement the waste incidental to reprocessing determination process is appropriate. Additionally, site management may conclude that instead of making determinations for individual waste streams, it may be cost effective to establish categories of wastes that meet the citation process requirements.

Example: At site X, management of the high-level waste tank farm involves periodic sampling and analysis of tank contents. When taking such samples, operations personnel generate "job wastes" that are contaminated ~~with high-level waste~~. In implementing the Hanford site "Citation Determination Process," a determination is made that such "job wastes" are not high-level waste, and characterization determines them to be low-level wastes. The site process or procedure for making waste incidental to reprocessing determinations requires that a one time determination is necessary and therefore, with the appropriate level of documentation and approval, similar wastes are considered to be included within this determination. Generation of similar wastes in the future do not have to be subjected to the waste incidental to reprocessing determination process.

Citation Process

The Field Element, using the process described in Section II.B., is responsible for determining if a waste meets the citation process requirements. This position was supported by DOE's Office of Environmental Management ~~and the Nuclear Regulatory Commission (NRC)~~ during the preparation of DOE M 435.1. As a result, no interaction with either DOE-EM or NRC is required. Guidance for Section II.B. provides information and examples on the types of wastes and waste streams that are considered non-high-level waste by use of the citation process. If after subjecting the waste to this process, the waste fails to meet the citation process requirement then the waste must be classified as high-level waste, unless it is subjected to the evaluation process discussed below.

This is DOE's call.

Evaluation Process

As noted in Section II.B., waste incidental to reprocessing determinations using the evaluation process requires involvement of three organizations: the program (site) management responsible for the management of the waste (which includes the Field Element Manager, or designee); EM Headquarters; and the NRC. In implementing a determination process, the Field Element Manager or designee should ensure, through written communications, that the NRC has no regulatory interest in the waste that has been determined to be incidental to reprocessing by use of the evaluation process. Information that should be provided to the NRC includes: 1) technical information, analysis, and justification that supports the conclusion that the waste is non-high-