

RAS 11031

In the Matter of Louisiana Energy Services, L.P.

Docket No. 70-3103-ML Official Exhibit No. 263

***1** IN THE MATTER OF
LOUISIANA ENERGY SERVICES, L.P.
(Claiborne Enrichment Center)
Nuclear Regulatory Commission

OFFERED by: Applicant/Licensee Intervenor
NRC Staff Other NERS/PC

IDENTIFIED on 10/27/05 Witness/Panel Makhijani

Atomic Safety and Licensing Board

Action Taken: ADMITTED REJECTED WITHDRAWN

Reporter/Clerk Patricia Engel

Docket No. 70-3070-ML, ASLBP No. 91-641-02-ML (Special Nuclear Material License)

March 2, 1995

Before Administrative Judges: Thomas S. Moore, Chairman; Richard F. Cole; Frederick J. Shon

MEMORANDUM AND ORDER

(Ruling on Intervenor's Petition to Waive Certain Regulations)

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On January 17, 1995, the Intervenor, Citizens Against Nuclear Trash (CANT), filed a petition pursuant to 10 C.F.R. § 2.758 to waive the waste classification provisions of 10 C.F.R. § 61.55(a)(3) and (a)(6) for this licensing proceeding. [FN1] According to the Intervenor, such a waiver is necessary to ensure that the 120,000 tons of depleted uranium waste from 30 years of operation of Louisiana Energy Service's proposed uranium enrichment facility will be disposed of in a manner adequate to protect the public health and environment and to ensure that the Applicant sets aside sufficient decommissioning funds for disposal of the uranium tails as required by 10 C.F.R. § 70.25. The Applicant and the NRC Staff oppose the waiver petition. [FN2] For the reasons set forth below, we deny the Intervenor's petition. A. Part 61 of the Commission's regulations sets out, in seven subparts, the licensing requirements for the land disposal of radioactive waste. [FN3] Subpart C of Part 61 contains performance objectives that all land disposal of radioactive waste, regardless of the type of waste involved, must meet. Those performance objectives are intended to 1) protect the general population from releases of radioactivity; 2) protect individuals from inadvertent intrusion after active institutional controls have ceased; 3) protect individuals during operation; and 4) ensure stability of the disposal site at closure. [FN4] Subpart D of Part 61 details the technical requirements for land disposal facilities. Section 55 of that subpart, 10 C.F.R. § 61.55(a), sets forth the Commission's classification system for determining what low-level radioactive waste generally is suitable for near-surface disposal. [FN5] It is portions of this classification system that the Intervenor seeks to have waived for this proceeding.

The Commission's waste classification regulation contains two tables: Table 1 lists certain long-lived radionuclides and Table 2 lists certain short-lived radionuclides. The waste classification system is based upon concentration limits in curies per cubic meter set out in section 61.55(a)(3) for the listed long-lived radionuclides. The regulation contains similar concentration limits for the listed short-lived radionuclides. [FN6] The regulation then establishes three classes of waste, A, B, and C, depending upon the concentration of radioactivity in the waste for the radionuclides listed in Tables 1 and 2, with Class A waste having the lowest concentration levels. [FN7] For waste exceeding the concentration limits of Class C, dubbed Greater Than Class C (GTCC), the regulation provides that it must be disposed of in a geologic repository unless the Commission approves of disposal in a facility licensed under Part 61. [FN8] Finally, for radioactive waste that does not contain any of the specific radionuclides listed in Table 1 or Table 2, the regulation provides in section 61.55(a)(6) that the waste is Class A waste. Because depleted uranium, the low-level radioactive waste from the Applicant's proposed enrichment facility, is not listed in either Table 1 or Table 2 it is Class A waste under the terms of section 61.55(a)(6).

*2 CANT's contentions B and J in this licensing proceeding challenge, respectively, the Applicant's decommissioning funding estimate and the true costs of tails disposal. These same concerns underlie the Intervenor's waiver petition: In a nutshell, CANT's petition asserts that the enormous quantity of depleted uranium waste from 30 years of operation of the Applicant's proposed enrichment facility should not be classified as Class A waste suitable for near-surface disposal under the catch all provision of section 61.55(a)(6). According to the Intervenor, the depleted uranium, in the form of U_3O_8 , should be classified as GTCC waste because of its high concentration of radioactivity and the extremely long half-life of uranium, which makes these enrichment tails most like transuranic waste. As GTCC waste, the Intervenor argues it should be disposed of in a geologic repository where the cost is as much as ten times more than the cost the Applicant has estimated in its decommissioning funding plan for disposal of the waste. In order to dispose of the depleted uranium safely and to estimate properly the cost of disposal, CANT seeks waiver of the default provision of section 61.55(a)(6). According to the Intervenor, that provision has the effect of classifying the depleted uranium waste from the Applicant's proposed facility as Class A waste suitable for near-surface disposal. CANT also seeks waiver of the Commission's waste classification system set out in section 61.55(a)(3) so that depleted uranium waste in concentrations greater than 100 nanocuries per gram (nCi/g) can be classified as GTCC transuranic waste that must be

disposed of in a geologic repository.

3. The Commission's Rules of Practice generally proscribe any challenge to NRC regulations in adjudicatory proceedings. The rules, however, contain a limited exception to the general prohibition that allows a party to an adjudicatory proceeding to petition for a waiver of a regulation if "special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted." [FN9] The waiver provision requires that a petition be accompanied by an affidavit that identifies the special circumstances justifying the waiver and explaining why the regulation would not serve its intended purpose. The Licensing Board has the authority to deny a waiver petition but not to grant one. [FN10] Rather, if the Licensing Board determines that the petition makes a prima facie showing that the regulation at issue does not serve the purpose for which it was adopted, the petition must be certified to the Commission for a determination whether the regulation should be waived. [FN11] As the now defunct Appeal Board stated, a prima facie showing within the meaning of the waiver rule is one that is "legally sufficient to establish a fact or case unless disproved." [FN12]

*3 In Seabrook, CLI-88-10, the Commission explained that under the waiver rule "[s]pecial circumstances are present only if the petition properly pleads one or more facts, not common to a larger class of applicants or facilities, that were not considered either explicitly or by necessary implication in the proceeding leading to the rule sought to be waived" and that the special circumstances "must be such as to undercut the rationale for the rule sought to be waived." [FN13] Additionally, the Commission declared that a licensing board was not to certify a petition "unless the petition and other allowed papers indicate that a waiver is necessary to address, on the merits, a significant safety problem related to the rule sought to be waived." [FN14] Thus, to have its waiver petition certified to the Commission, the Intervenor must make a prima facie showing of one or more unique facts not considered by the Commission in promulgating the waste classification regulations that undercut the rationale for the rule and establish a significant safety problem.

C. In its waiver petition, the Intervenor first attempts to show that this licensing proceeding presents the requisite special circumstances not previously considered by the Commission in the Part 61 rulemaking. To make its case, CANT argues that the NRC has never before licensed a uranium enrichment facility so there has been no need to establish a waste classification for enrichment tails because all previous enrichment activities have been performed at Department of Energy facilities, which are not licensed by the NRC. It then argues that in the proposed rule for Part 61 the Commission included depleted uranium in section 61.55 in a combined table listing long and short-lived radionuclides. The proposed rule classified depleted uranium in concentrations greater than .05 microcuries per cubic centimeter ($\mu\text{Ci}/\text{cm}^3$) as not generally acceptable for near-surface disposal. Under the proposed rule, such waste could only be disposed of with specific Commission approval pursuant to section 61.58, a provision which remained unchanged in final rule. In issuing the final rule, the Commission dropped depleted uranium from the listing of specific radionuclides indicating in the statement of considerations that

[u]ranium has been removed as a radionuclide that must be considered for waste classification. The Commission's analysis shows that the types of uranium-bearing wastes being disposed of do not present a sufficient hazard to warrant limitation on the concentration of this naturally occurring material. Both depleted and enriched uranium do not contain daughter products in any quantity because of the relatively short time since the uranium was refined from ore compared to the half lives of the uranium isotopes. The daughter products are disposed of primarily as uranium mill tailings. Primarily for these reasons, the uranium limits were dropped. [FN15]

Thus, according to the Intervenor, the Commission dropped depleted uranium from the waste classification rule because at the concentration of uranium being considered the volume of such waste going into NRC regulated facilities was small.

*4 In contrast to the situation prevailing when the Commission dropped depleted uranium from the final waste rule, CANT argues that the volume of waste (approximately 120,000 tons) that the Applicant's enrichment facility will produce over its operating life is enormous. Additionally, these wastes are highly concentrated. According to the Intervenor, the depleted U_3O_8 waste produced by the Applicant's facility contains significant concentrations of radioactivity (approximately 300 nCi/g), which is "12 to 60 times more radioactive than the levels of radioactivity concentration implied by the NRC proposed rule." [FN16] Because these facts were not considered by the Commission in promulgating the waste classification rule, CANT argues that these unique circumstances meet the special circumstances requirement for a rule waiver.

In opposing the waiver petition, the Applicant and the Staff both argue that the Intervenor has not demonstrated the requisite special circumstances. For its part, the Applicant asserts that the Commission explicitly considered and consciously decided to eliminate the waste classification for depleted uranium contained in the proposed rule and that the Intervenor's argument regarding concentrations and volumes of uranium waste simply mischaracterizes the Commission's rationale. Further, the Applicant argues that at the same time the Commission removed depleted uranium from the waste classification table of the proposed rule, it added the catch-all provision of section 61.55(a). The Applicant asserts, therefore, that in issuing the Part 61 regulations the Commission necessarily considered that uranium tails would be classified as Class A waste so the Intervenor has failed to establish the necessary special circumstances for a rule waiver.

Unlike the Applicant, the Staff concedes that the Commission did not explicitly consider depleted uranium tails from an

enrichment facility as one of the waste streams under consideration in the Part 61 rulemaking because such wastes were not being disposed of in NRC licensed facilities at that time. It argues, however, that the Commission nevertheless considered, by necessary implication, the disposal of large quantities of depleted uranium because the regulatory scheme of Part 61 requires that the disposal of all Part 61 wastes, regardless of quantity, meets the performance objectives of Subpart C.

Contrary to the Applicant's argument to the effect that the Commission explicitly considered the disposal of large quantities of depleted uranium tails in the Part 61 rulemaking, the history of the rulemaking indicates that the Commission did not explicitly consider the depleted uranium waste from enrichment facilities. For example, Appendix D of the 1981 Draft Environment Impact Statement on the Part 61 rule, titled "Low-Level Waste Source and Processing Options," contains the agency's data base on sources of low-level radioactive waste. Section 2 of Appendix D provides a description of the waste streams then being generated or expected to be generated in significant quantities. With respect to the nuclear fuel cycle, section 2.1 notes that because enrichment facilities in the United States are government owned and enrichment wastes are not sent to commercial disposal facilities, "waste streams produced from uranium enrichment operations are not considered further in this appendix." [FN17]

*5 Additionally, the explanation with respect to why depleted uranium was removed from the final Part 61 rule set forth in the Commission's statement of considerations was essentially copied from the Final Environmental Impact Statement (FEIS) on the rule. The discussion in the FEIS makes clear that the data base for the environmental impact statement that was analyzed only included "the types of uranium bearing wastes being typically disposed of by NRC licensees." [FN18] In light of this history, we think the Intervenor and the Staff are correct that the Commission did not explicitly consider enrichment tails as one of the included waste streams in the Part 61 rulemaking. The fact that the Commission did not explicitly consider enrichment tails in the waste classification provisions of the Part 61 rulemaking, however, does not establish the requisite special circumstances necessary for a rule waiver. This is because Part 61 establishes a broad regulatory scheme for the land disposal of radioactive waste other than disposal in a geologic repository. The regulatory structure includes the performance objectives of Subpart C that apply to all wastes, regardless of whether the waste is Class A, B, C or GTCC, and all types of land disposal regardless of whether it is near-surface disposal or some other intermediate or deeper land burial. [FN19] In short, the Part 61 regulatory scheme is intended to accommodate all manner of wastes as long as the disposal meets the performance objectives of Subpart C. Thus, as long as the disposal of uranium enrichment tails meets the performance objectives of Subpart C, Part 61 is intended to accommodate such disposal and the Commission, "by necessary implication", considered the disposal of this waste in the rulemaking proceeding. [FN20] Accordingly, the Intervenor has not established the necessary special circumstances required by 10 C.F.R. § 2.758(b)(1) for a rule waiver and its petition must be denied.

D. Intervenor's waiver petition also does not establish the second requirement for a rule waiver. The Intervenor has not made a prima facie showing that the purpose of the Commission's Part 61 regulations is undercut by the classification of depleted uranium tails as Class A waste. Thus, for this additional and alternative reason, CANT's waiver petition is denied.

The Intervenor argues that the safety objectives of the Part 61 regulations are not served by the classification of depleted uranium enrichment tails as Class A waste. Those objectives are set forth in 10 C.F.R. § 61.7(b) and state that the purpose of the disposal regulations is "protection of the general population from releases of radioactivity, protection of individuals from inadvertent intrusion, and protection of individuals during operations. A fourth objective is to ensure stability of the site after closure." [FN21] According to CANT, classifying depleted uranium tails as Class A waste and disposing of the waste in a near-surface facility will result in excessive radiation releases to the public.

*6 The Intervenor also claims that in its chemical and physical characteristics enrichment tails are unlike Class A waste and most like GTCC transuranic waste. CANT asserts that depleted uranium contains alpha emitting radionuclides, principally uranium-238 with a half-life of 4.46 billion years, while the transuranic nuclides listed in section 61.55 have half-lives of thousands to millions of years. The Intervenor also declares that depleted uranium is comparable to transuranic waste in its radiological characteristics and that the specific activity of depleted uranium tails is thirty times the limit of specific activity in section 61.55 for Class A transuranic waste and three times the threshold level of specific activity in that regulation for classification as GTCC transuranic waste. The Intervenor asserts, therefore, that the tails are most like GTCC transuranic waste and should be classified the same way and disposed of in a geologic repository. Because repository disposal is many times more expensive than near-surface disposal, CANT argues that the classification of the enrichment tails as Class A waste suitable for near-surface disposal significantly underestimates the costs of disposal thereby undercutting the purpose of 10 C.F.R. § 70.25, which is intended to ensure adequate decommissioning funds.

In response to the Intervenor's argument, the Applicant and the Staff both argue that classification of enrichment tails as Class A waste pursuant to section 61.55(a)(6) does not undercut the purposes of the Part 61 rules. They assert that the Commission's regulatory purpose is not compromised because, regardless of the classification of the depleted uranium as A, B, C or GTCC waste and regardless of the type of land disposal involved, the enrichment tails cannot be disposed of pursuant to Part 61 unless the performance objectives of Subpart C are met. Accordingly, they argue that the safety objectives of the Commission's regulations are neither undercut nor affected by the classification of the waste as Class A waste.

The Applicant and the Staff also claim that the classification of depleted uranium as Class A waste does not undercut the purpose of the decommissioning funding plan cost estimates required by section 70.25. Because the Applicant's

decommissioning funding plan is based upon the disposal of the depleted uranium tails in other than a near-surface facility in order to meet the performance objectives of Subpart C, the Applicant and the Staff argue that the classification of the waste as Class A waste pursuant to section 61.55(a)(6) does not in any way undercut the rationale of the decommissioning funding rule.

Contrary to the Intervenor's assertions, the classification of enrichment tails as Class A waste under the catch-all provision of section 61.55(a)(6) does not undercut the purpose of the Part 61 regulations set forth in section 61.7(b). The mere classification of the Applicant's enrichment tails as Class A waste does not guarantee, as CANT's argument implicitly assumes, that the waste can be disposed of in a near-surface facility. Rather, all low level radioactive waste must meet the performance objectives of Subpart C in order to be disposed of under Part 61. In other words, under Part 61 the classification of waste is not the sole determinant of whether the waste may be disposed of in a near-surface facility as the Intervenor apparently assumes. The performance objectives of Subpart C, which the Intervenor has not challenged, ensure that the safety objectives of Part 61 are met. This being the case, the classification of depleted uranium tails as Class A waste under the catch-all provision of section 61.55(a)(6) does not undercut the purpose of the Part 61 regulations.

*7 Similarly, the classification of enrichment tails as Class A waste does not undercut the rationale of the Commission's decommissioning funding regulation as the Intervenor claims. Like CANT's other arguments, this one is apparently premised on the erroneous notion that the classification of enrichment tails as Class A waste permits the Applicant to dispose of the waste in a near-surface facility, which the Intervenor claims is inappropriate for such waste and substantially underestimates disposal costs thereby undercutting the purpose of the decommissioning funding regulation. As we have already shown, the Intervenor's premise is incorrect because all waste, regardless of its classification, and all types of land disposal must meet the performance objectives of Subpart C before it can be disposed of under Part 61. If the near-surface disposal of enrichment tails, regardless of how the waste is classified, cannot meet the performance objectives of Subpart C, it cannot be disposed of in a near-surface facility. This being so, the mere characterization of enrichment tails as Class A waste under 10 C.F.R. § 61.55(a)(6) does not undercut the rationale of the decommissioning cost estimate provisions of section 70.25.

Indeed, the Final Environmental Impact Statement for the Applicant's proposed enrichment facility states that the disposal of enrichment tails in a near-surface facility likely would not meet the performance objectives, specifically the dose limits, of Subpart C. Hence, the FEIS concludes that the enrichment tails will need to be disposed of in other than a near-surface facility such as a deep disposal site. [FN22]

Because the disposal of enrichment tails likely would not meet the performance objectives of Subpart C, the Applicant asserts that it based its disposal cost estimates on the placement of the enrichment tails in a deep disposal site. But the fact that the Applicant's enrichment tails are classified as Class A waste under section 61.55(a)(6), does not in any way preclude the disposal of the tails in a deep disposal site licensed under Part 61 or undercut the rationale of the Commission's decommissioning funding regulation. The performance objectives of Subpart C are the final determinant on the type of land disposal for the wastes involved, not the waste classification.

In this regard, CANT also argues that the appropriate waste classification is necessary in order to determine whether the performance objectives of Subpart C apply. Here again, however, the Intervenor's argument ignores the regulatory scheme of the Commission's land disposal regulations that allows all low level waste, regardless of its classification as A, B, C or GTCC waste, to be disposed of under Part 61 if it meets the performance objectives of Part 61.

Finally, the Intervenor claims that the Part 61 regulations presume that GTCC waste will be disposed of in a geologic repository unless the Commission approves of a specific licensed site. Because no specific site has been proposed by the Applicant for the disposal of its enrichment tails, CANT argues that the waste must be disposed of in a geologic repository and the Applicant's decommissioning cost estimates must be based on that form of disposal. Even putting to one side CANT's assumption that depleted uranium should be classified as GTCC waste, the Intervenor's argument ignores the context of the current licensing proceeding. In admitting CANT's contentions dealing with the costs of disposal of the Applicant's enrichment tails, the Licensing Board ruled that the Commission's hearing notice only requires the Applicant to have a plausible strategy for the disposition of the depleted uranium tails and that a concrete plan is not required. [FN23] Obviously, costs play a significant part in any plausible disposal strategy, so the strategy must consider the various factors that influence costs and appropriately bound the costs for a particular type of disposal. Contrary to the Intervenor's assertion, a specific licensed site and actual disposal costs are not required. To hold otherwise would disregard the Commission's hearing notice for this proceeding.

*8 E. In its petition, CANT does not separately address the Commission's third requirement for obtaining a rule waiver, i.e., that a waiver is necessary to address a significant safety problem. The gist of the Intervenor's entire petition, however, is that the classification of enrichment tails as Class A waste is unsafe and that the tails should be classified as GTCC transuranic waste and deposited in a geologic repository. We need not reiterate the specifics of CANT's assertion that depleted uranium tails are tantamount to transuranic waste. Suffice it to note that the linchpin of the Intervenor's claim is an asymmetrical comparison (i.e. apples to oranges comparison) between depleted uranium and the concentrations of long-lived transuranic wastes listed in 10 C.F.R. § 61.55. The expert affidants of the Applicant the Staff fully rebut CANT's conclusions and adequately demonstrate why the Intervenor's characterization of depleted uranium as GTCC transuranic waste is not technically sound. We need not repeat those explanations here. We note, however, that the potential hazards associated with the disposal of GTCC transuranic waste are many times higher than those for depleted uranium.

In this regard, the Part 61 limits on concentrations of radioactivity that the Intervenor uses as a comparison point are generally designed to insure that a huge amount of diluent material is present with a minute quantity of waste so that a person can never ingest enough of the radioactive substance to be harmful. Because the elemental specific activity of depleted uranium is so small compared to that of long-lived transuranic elements, it would be extremely difficult for a person to ingest enough depleted uranium disposed of in a manner meeting the performance objectives of Subpart C to create a radiological hazard. Indeed, depleted uranium tails present a far greater chemical toxicity hazard than a radiological one [FN24]--a problem the Intervenor mentions in a footnote but otherwise ignores in its waiver petition. Therefore, because the Intervenor's waiver petition also does not demonstrate that a rule waiver is necessary to address a significant safety problem, the petition is denied for this additional reason.

For the foregoing reasons, CANT's petition to waive 10 C.F.R. § 61.55(a)(3) and (a)(6) is denied. The Intervenor's petition fails to make a prima facie showing that there are special circumstances warranting a rule waiver. The petition also fails to make a prima facie showing that application of the Commission's waste classification regulations undercuts the rationale of those regulations or the rationale of the Commission's decommissioning funding regulations. Finally, the Intervenor's petition fails to demonstrate that a rule waiver is necessary to address a significant safety problem. It is so ORDERED.

THE ATOMIC SAFETY AND Licensing Board

Thomas S. Moore
Chairman
ADMINISTRATIVE JUDGE

Richard F. Cole
ADMINISTRATIVE JUDGE

*9 Frederick J. Shon
ADMINISTRATIVE JUDGE
Rockville, Maryland
March 2, 1995

FN1 Citizens Against Nuclear Trash's Petition for Waiver of 10 C.F.R. § 61.55(a)(3) and 10 C.F.R. § 61.55(a)(6) and for Classification of Depleted Uranium Tails as Greater Than Class C Radioactive Waste [hereinafter Intervenor's Petition] (JUL 17, 1995).

FN2 Louisiana Energy Service's Response In Opposition to Citizens Against Nuclear Trash's Petition for Waiver of 10 C.F.R. § 61.55(a)(3) and 10 C.F.R. § 61.55(a)(6) and for Classification of Depleted Uranium Tails as Greater Than Class C Radioactive Waste [hereinafter Applicant's Response] (Feb. 1, 1995); NRC Staff Response In Opposition to Citizens Against Nuclear Trash's Petition for Waiver of 10 C.F.R. § 61.55(a)(3) and 10 C.F.R. § 61.55(a)(6) and for Classification of Depleted Uranium Tails as Greater Than Class C Radioactive Waste [hereinafter NRC's Response] (Feb. 6, 1994).

FN3 Pursuant to 10 C.F.R. § 61.2 a geologic repository is not considered a land disposal facility.

FN4 10 C.F.R. §§ 61.41-44.

FN5 Section 61.7(a)(2) of Part 61 provides that "[n]ear-surface disposal of radioactive waste takes place at a near surface disposal facility," a term that is defined in 10 C.F.R. § 61.2 as "a land disposal facility in which radioactive waste is disposed of in or within the upper 30 meters of the earth's surface." Section 61.7(a) makes clear, however, that "[b]urial deeper than 30 meters may also be satisfactory."

FN6 10 C.F.R. § 61.55(a)(4).

FN7 10 C.F.R. § 61.55(a)(2).

FN8 10 C.F.R. § 62.55(a)(2)(iv).

FN9 10 C.F.R. § 2.758(b)(1).

FN10 10 C.F.R. § 2.788(c).

FN11 10 C.F.R. § 2.758(d).

FN12 Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653, 16 NRC 55, 72

(1981).

FN13 Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-88-10, 28 NRC 573, 597 (1988).

FN14 Id.

FN15 47 Fed.Reg. 57,446, 57,456 (1982).

FN16 Intervenor's Petition at 13.

FN17 NUREG-0782, Draft Environmental Impact Statement on 10 C.F.R. Part 61, Vol. 3, App. D at D-7 (Sept. 1981).

FN18 NUREG-0945, Final Environmental Impact Statement on 10 C.F.R. Part 61, Vol. 1, at 5-38 (Nov. 1982).

FN19 See 10 C.F.R. §§ 61.41-44; 61.55(a)(2)(iv); 61.58. See generally 54 Fed.Reg. 22,578, 22,581 (1989) (Statement of Considerations accompanying amendment of 10 C.F.R. § 61.55(a)(2)(iv) where the Commission states, that its regulations for licensing of radioactive waste disposal consists exclusively of 10 C.F.R. Part 60, which applies to disposal in a geologic repository, and 10 C.F.R. Part 61, which applies to all other land disposal, and states that "[a] wide variety of disposal methods, including all those currently proposed as "intermediate" disposal methods, could be licensed under Part 61").

FN20 Admittedly, there is a seeming incongruity in explicitly not considering in a rulemaking a particular waste stream, and then adopting an overall regulatory structure that will accommodate what was intentionally not considered. This seeming incongruity, however, is more imagined than real. Precisely because all future eventualities cannot be anticipated, a regulation, like legislation, is often designed broadly in order to accommodate unanticipated future situations as well as situations that, for a variety of reasons, were specifically not addressed during the rulemaking. In Part 61, the Commission has done just that in adopting a broad regulatory approach for the land disposal of radioactive waste.

FN21 10 C.F.R. § 61.7(b).

FN22 NUREG-1484, Final Environmental Impact Statement for the Construction and Operation of Claiborne Enrichr. Center, Homer, Louisiana, Vol. 1 at 4-66 to 4-68, and App. A at A-9 to A-15 (Aug. 1994).

FN23 LBP-91-41, 34 NRC 332, 337-38 (1991). See 56 Fed.Reg. 23,310, 23,313 (1991).

FN24 See generally 10 C.F.R. § 20.1201(e) and App. B, n. 3 at 386.

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