

June 11, 2010

Mr. Dane L. Finerfrock, Director
Division of Radiation Control
State of Utah
P.O. Box 144850
Salt Lake City, UT 84114-4850

SUBJECT: PROPOSED RULE FOR SITE-SPECIFIC PERFORMANCE ASSESSMENT

Dear Mr. Finerfrock:

I would like to take this opportunity to comment to the Utah Radiation Control Board (the Board) for its consideration of whether to propose a rule that would require a site-specific performance assessment in some situations and that would provide direction about how performance assessments should be conducted. I would first like to make clear that this letter is not a compatibility review. The U.S. Nuclear Regulatory Commission (NRC) will review any proposed and final rule from the State of Utah for compatibility with Federal Regulations as established in the Office of Federal and State Materials and Environmental Programs Procedure SA-200.

As the Board is aware, the NRC is currently developing a technical basis for a proposed regulation at 10 CFR Part 61 to specify a site-specific performance assessment for the disposal of unique waste streams, including significant quantities of depleted uranium. This process is expected to clarify criteria and guidance for the safe disposal of low-level radioactive waste. The NRC anticipates developing proposed rule language in September 2011, and a final rule after receiving public comments in September 2012. Once a final rule is implemented, the State of Utah will have three years to develop conforming regulations.

During our public meetings last September, both in Rockville, Maryland and Salt Lake City, Utah, we discussed with the participants how other unique waste streams should be captured by the rulemaking effort. Participants suggested that unique waste should not be defined by the rule and to utilize the performance assessment to assess whether additional analyses would be required to accept a new waste stream into a facility (see <http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/uw-streams/key-messages.html>). This is similar in concept to the approach the Board is considering.

In April, the NRC staff provided the NRC Commission with an analysis of the issues related to the blending of low-level radioactive waste of higher radionuclide concentration with other similar low-level radioactive waste of lower radionuclide concentration to form a final homogeneous mixture (SECY-10-0043). The NRC staff's recommendation to the NRC Commission is to revise blending positions to be risk-informed and performance-based through both guidance and rulemaking. The rulemaking revisions would be completed as part of the unique waste rulemaking and would be primarily focused on requirements for evaluating intruder protection on a site-specific basis as part of the performance assessment.

D. L. Finerfrock

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Depending upon the outcome of the NRC's rulemaking, revisions to this potential Utah rule may be required to ensure continued compatibility with Federal regulations. The Board may want to consider if the regulatory change currently proposed would be exercised prior to the publication of the NRC final rule and when the State of Utah may need to modify its existing regulations to ensure compatibility.

In addition to the consideration of process and need, I would like to take this opportunity to comment on a couple of the conditions under consideration.

- Condition 2.a. The Board may want to consider a screening approach before requiring a full performance assessment as could be interpreted from this section. For a number of radionuclides that are not specifically listed in the classification system, their inventories are small and simple bounding assessments can be done to evaluate their risk.
- Condition 2.c. It currently reads "demonstrate that the facility is at least as likely as not to be able to meet performance objectives." This should be revised to be consistent with other similar State regulations. While we acknowledge that the performance assessment must address the uncertainties, the regulator should still have reasonable assurance, possibly, through multiple lines of reasoning, and not just the numerical results of the performance assessment, that the performance objectives will be met during the compliance period.

If you have any questions regarding these comments, please contact me at 301-415-6673, or by email at Larry.Camper@nrc.gov.

Sincerely,

/RA/

Larry W. Camper, Director
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

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Larry W. Camper, Director
 Division of Waste Management
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