



NUCLEAR ENERGY INSTITUTE

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June 17, 2011

Ms. Annette L. Vietti-Cook  
Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
ATTN: Rulemakings and Adjudications Staff

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**Subject:** Request for Public Comment on Preliminary Proposed Rule Language in 10 CFR Part 61 for "Site-Specific Analyses for Demonstrating Compliance With Subpart C Performance Objectives" [Docket No. NRC-2011-0012]

**Project Number: 689**

Dear Ms. Vietti-Cook:

On behalf of the nuclear industry, the Nuclear Energy Institute (NEI)<sup>1</sup> appreciates the opportunity to provide comments on the preliminary 10 CFR Part 61 rule language that would require a site-specific analysis to demonstrate compliance with Subpart C performance objectives when disposing of depleted uranium (DU) in quantities not previously analyzed by the U.S. Nuclear Regulatory Commission (NRC). The preliminary rule language, supporting technical basis documents, and the public meeting conducted on May 18, 2011, were very helpful in understanding the associated technical issues and policy perspectives being considered by NRC at this time.

While the technical issues raised in the preliminary rule are important, we do not believe they should be included in this limited scope DU rule, as they preempt the important and ongoing NRC stakeholder input process on the broader effort to risk inform Part 61, as directed by the Commission. Therefore, we have the following concerns with the DU rule and trust that the staff finds our comments informative and useful.

First, proceeding with the DU rulemaking as published is not consistent with Commission direction for a limited-scope rulemaking. Specifically, the Commission directed the staff in a staff requirements memorandum (SRM) on SECY-08-0147 "Response to Commission Order CLI-05-20 Regarding Depleted

<sup>1</sup>NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry.

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Uranium" to: (1) undertake a near-term, limited-scope rulemaking to require a site-specific analysis for the disposal of large quantities of DU (including development of associated guidance); and (2) as a longer-term action, to propose necessary resources for a comprehensive revision to risk-inform 10 CFR Part 61. The Commission also directed the staff (SRM M100617B dated July 1, 2010) to provide an approach (SECY-10-0165) to conduct a comprehensive review of Part 61 to risk inform the regulatory framework for radioactive waste disposal which we understand would include consideration of the very technical and policy issues being considered by the staff now in the context of the limited DU rule.

Second, the preliminary rule language for the disposal of DU appears inconsistent with the March 2010 recommendations of NRC's Advisory Committee on Reactor Safeguards (ACRS). After being briefed by the staff on the DU rulemaking, ACRS recommended that the staff rely on site-specific, realistic performance assessments with appropriate consideration of uncertainties and not attempt to define a fixed period of performance, e.g., 10,000 years. However, the staff is proposing to amend Part 61 to add a period of performance, e.g., 20,000 years among other new prescriptive requirements.

Third, while we support meaningful discussion and consideration of key technical and policy issues associated with the safe disposal of radioactive waste (e.g., period of performance, human intrusion limits, and dose methodology), addressing them in the limited DU rulemaking is premature and it preempts the current NRC stakeholder input process on the broader Part 61 rulemaking as outlined in SECY 10-165. In addition to stakeholder meetings specifically related to Part 61, there are other NRC efforts underway that are integral to the consideration of these technical issues and need to be considered and coordinated, such as the potential major revisions to radiation protections standards in 10 CFR Part 20 and Appendix I to 10 CFR Part 50. We support NRC's efforts to continue to involve stakeholders in this important rulemaking and other related NRC rulemakings.

Fourth, addressing the generic technical and policy issues in the limited DU rulemaking is not efficient and does not provide for regulatory stability. Specifically, the NRC staff acknowledged during the May 18 meeting, on the DU preliminary rule, that any changes made during this rulemaking may be re-examined during subsequent efforts to risk inform Part 61. Thus, in the interest of efficiency and regulatory stability, NRC should limit this rulemaking to modifying Part 61 to require a site-specific performance assessment for authorization requests to dispose of large quantities of DU, as directed by the Commission, rather than adopt the "one size fits all" waste stream neutral approach presented in the preliminary rule.

On a related note, the technical analysis published with the preliminary DU rule states that NRC intends to also address blended wastes in this rule. However, it is not clear that blended low-level waste would trigger the site-specific analysis called for in the preliminary rule language. Specifically, the requirement for an "intruder assessment" in the preliminary language is applied when waste is characterized as Class A because it does not contain nuclides listed in the waste classification tables. Since blended wastes may consist entirely of listed nuclides, it does not appear that the preliminary revision to 10 CFR Section 61.55 would require an intruder assessment prior to disposal of all blended radioactive wastes. Therefore, the applicability of any proposed rule to blended waste streams should be clarified. In addition, while industry understands that efficiencies may be gained by addressing blending as part of the limited-scope

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rulemaking, we continue to believe that blended wastes are not analogous to DU, which presents truly unique issues, such as the in-growth of daughter products. The safe disposal of blended wastes should be considered within the scope of the broader Part 61 rulemaking which the staff is scheduled to provide a status report to the Commission by the end of December 2012.

Fifth, during the May 18 meeting, representatives of the Department of Energy (DOE) discussed their approach to disposal of large quantities of DU. This presentation, along with comments provided by other stakeholders, raised relevant questions regarding how NRC has considered harmonizing its regulatory framework with DOE and the commercial sector which have programs to safely manage these materials. Such national regulatory framework issues should be addressed in the context of the broad Part 61 rulemaking.

Sixth, the limited DU rulemaking could potentially be informed by the Utah review of the site-specific performance assessment recently submitted by Energy Solutions for disposal of large quantities of DU at the Clive, Utah site. Therefore, the timing of the DU rulemaking and related guidance should be such that NRC and its stakeholders benefit from the experience gained and information gleaned from this site-specific performance assessment specifically submitted to seek authorization for the disposal of large quantities of DU. There is also the important matter of the appropriate Agreement State compatibility level assigned to this rule, which needs to be carefully considered in view of the transboundary nature of DU management.

Finally, we would like to acknowledge the staff's effort to develop the technical basis and believe that this work will provide value for future regulatory activities. We look forward to reviewing the proposed rule language along with corresponding guidance documents. In addition, final guidance should be available to support the effective date of the final rule.

Thank you for the opportunity to comment. Should you have any questions, please feel free to contact Janet Schlueter at 202-739-8098; [jrs@nei.org](mailto:jrs@nei.org) or Andrew Mauer at 202-739-8018; [anm@nei.org](mailto:anm@nei.org).

Sincerely,



Ralph L. Andersen

c: Ms. Cindy K. Bladey, ADM/DAS/RADB, NRC  
Mr. Larry W. Camper, FSME/DWMEP, NRC  
Mr. Andrew G. Carrera, FSME/DILR/RB-A, NRC