

# POLICY ISSUE INFORMATION

December 28, 2011

SECY-11-0182

FOR: The Commissioners

FROM: R. W. Borchardt  
Executive Director for Operations

SUBJECT: ANNUAL REVIEW OF THE NEED FOR RULEMAKING OR  
REGULATORY GUIDANCE ON EXTENDED<sup>1</sup> STORAGE OF  
LOW-LEVEL RADIOACTIVE WASTE

## PURPOSE:

This paper reaffirms the U.S. Nuclear Regulatory Commission (NRC) staff's previously stated position that rulemaking related to extended low-level radioactive waste (LLRW) storage is unnecessary and informs the Commission of the staff's recent efforts to develop guidance and supplemental information associated with LLRW storage. This paper also informs the Commission of the staff's decision to discontinue these annual reports and to stop its work on a consolidated LLRW storage NUREG, as discussed in SECY 09-0188.

## SUMMARY:

Since 2005 the staff has provided an annual report to the Commission on the extended storage of LLRW. In SECY-06-0193 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML061730187), the staff concluded that the NRC's current regulatory framework provides an adequate basis for storing radioactive material (including radioactive waste). Further, the paper concluded that additional rulemaking was unnecessary. Since 2006, the staff has directed its efforts on extended LLRW storage toward reviewing and updating guidance and other resource material. In 2009, the staff stressed the need to review and assess the continued adequacy of guidance on the extended storage of LLRW because many licensees continued to lack access to permanent disposal.

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Earlier discussions related to this topic used the term "long-term storage." The staff recently converted to use of the term "extended storage." For the purposes of this paper, the terms are synonymous.

In SECY-09-0188, "Annual Review of the Need for Rulemaking and/or Regulatory Guidance on Low-Level Radioactive Waste Storage," dated December 31, 2009 (ADAMS Accession No. ML093200008), the staff committed to continue to develop and compile detailed information related to LLRW storage for inclusion in a NUREG report that will contain guidance and information for all licensees.

In SECY-10-0164, "Annual Review of the Need for Rulemaking and/or Regulatory Guidance on Extended Low-Level Radioactive Waste Storage," dated December 23, 2010 (ADAMS Accession No. ML103090031), with the benefit of input from a topic-specific working group, the staff committed to publish an interim Regulatory Issue Summary (RIS) and revised its previous commitment to prepare a NUREG report, pending the availability of resources. The RIS was considered a near-term communication tool reminding licensees of available LLRW storage information. The NUREG was envisioned to be a longer-term, all-inclusive LLRW storage guidance document. These commitments were informed by a low-level waste storage working group comprised of internal and external stakeholders.

This paper provides the Commission with a status report of the staff's efforts and progress in the development of guidance and other resource material associated with extended LLRW storage, informs the Commission of the staff's decision to discontinue these annual reports and to stop development of the LLRW-consolidated-guidance NUREG.

#### BACKGROUND:

In Staff Requirements Memorandum (SRM) SECY-03-0223, "Rulemaking Plan: Assured Isolation Facilities," dated January 29, 2004 (ADAMS Accession No. ML040290568), the Commission directed the staff to provide an annual update on the need for regulations or regulatory guidance on extended interim storage of LLRW. Since that time, the staff has produced an annual Commission paper reviewing extended storage practices and determining the need for additional guidance or rulemaking.

In SECY-06-0193, "Annual Review of the Need for Rulemaking and/or Regulatory Guidance on Low-Level Waste Storage," dated September 6, 2006 (ADAMS Accession No. ML061730187), the staff stated that the NRC's existing regulatory framework was adequate to accommodate extended LLRW storage and that additional rulemaking was therefore unnecessary.

Staff reports in 2008 and 2009 discussed recent efforts to update extended-storage guidance due to the increased use of extended storage because of the closure of the LLRW disposal facility near Barnwell, South Carolina to out-of-compact waste.

In SECY-09-0188, the staff also identified several emerging issues that reinforce the need to reevaluate the NRC's guidance on extended LLRW storage. These issues included, but were not limited to, contentions raised by interveners in new reactor licensing proceedings and concerns about some material licensees' continued ability to safely and securely maintain unwanted radioactive material. The staff committed to discuss these concerns with stakeholders and to continue to develop and compile detailed guidance on LLRW storage for all licensees.

DISCUSSION:

In April 2010, the staff formed a LLRW storage working group consisting of internal and external subject matter experts. The working group met by telephone on a monthly basis to discuss the availability and adequacy of guidance and other information relevant to the extended storage of LLRW. Although the working group was able to identify adequate guidance from NRC sources and elsewhere to address all licensing circumstances, the guidance was located in various sources and was not always readily available. In addition, the utility of the guidance was not always apparent. To address these concerns, the working group developed a two-phase approach, which the staff discussed in SECY-10-0164.

To complete the first phase, NRC staff, aided by recommendations of the working group, prepared RIS 2011-09, "Available Resources Associated with Extended Storage of Low-Level Radioactive Waste," August 16, 2011 (ADAMS Accession No. ML111520042). The RIS was issued to all applicable licensees, Agreement State radiation control program directors, and State liaison officers, and reminds these stakeholders of the availability of relevant storage guidance that would be applicable to extended storage of LLRW. It also references an electronic database on the NRC's public web site (<http://www.nrc.gov/waste/llw-disposal/public-outreach/llw-extended-storage-information.html>) for the continuous compilation of resources that might be useful regarding extended storage. After completing the RIS, the staff sent an Office of Federal and State Materials and Environmental Management Programs (FSME) letter (FSME-11-095, October 20, 2011) to Agreement State radiation control program directors and all State liaison officers to remind them of the availability of the RIS and the electronic database. The letter also invited suggestions for documents to include in the database. To date, there have been no recommendations for inclusion of additional material in the database.

In the second phase, the working group planned to prepare a NUREG that would have consolidated the guidance for extended LLRW storage into one document. However, after completing the RIS issued in the first phase, as discussed above, the staff thought that it would be prudent to revisit the purpose of and need for the proposed NUREG. The working group met on September 20, 2011, to discuss this phase of the project. A summary of the meeting is available in ADAMS (Accession No. ML112650075).

During the September 20, 2011, meeting, members of the working group observed that recent circumstances concerning the licensing and imminent operation of the Waste Control Specialists, LLC (WCS) LLRW disposal site near Andrews, Texas, could positively impact some of the Nation's waste disposal challenges. The Texas Compact Commission has developed rules that, if finalized, would allow for out-of-compact disposal of LLRW, which could provide access to a disposal site for generators that have been forced to store Class B and Class C LLRW. Out-of-compact access to the WCS site could thus reduce the need for extended storage of Class B and C LLRW.

The working group also concluded that the electronic database mentioned above can adequately serve the LLRW storage guidance needs of licensees and other stakeholders in the future. As the database evolves, it could serve as a common location for most sources of guidance and information related to extended storage of LLRW. Further, the database may be updated on a continuous basis as relevant information becomes available. The database is available for use by licensees and other stakeholders, and the staff works with these stakeholders to ensure that the database is up to date.

Further, the staff is not aware of any confusion on the part of stakeholders that would suggest that expanded or refined guidance or other information on LLRW storage is necessary. In particular, the staff has not found any evidence through inspections or other regulatory mechanisms indicating that there is confusion on the part of stakeholders arising from the lack of consolidated LLRW storage guidance.

For the foregoing reasons, the staff believes that moving forward with the preparation of a NUREG is no longer necessary. The NUREG would have consolidated all existing guidance on LLRW storage and addressed any identified gaps in the existing guidance. As noted here and in SECY-10-0164, the working group did not identify any gaps in LLRW storage guidance, and the staff provided a reminder of available LLRW storage guidance and resources in RIS-2011-09. The staff believes that resources would be better spent on other aspects of LLRW management, as discussed in the strategic assessment in SECY-07-0180, "Strategic Assessment of Low-Level Radioactive Waste Regulatory Program," dated October 17, 2007 (ADAMS Accession No. ML071350291). Therefore, the staff has decided to stop work on a NUREG containing consolidated LLRW storage guidance.

With a determination to forego the preparation of this NUREG, periodic meetings of the low-level waste storage guidance working group will no longer be necessary. Therefore, the staff will eliminate the topic-specific working group of internal and external stakeholders. In order to continue a dialogue with stakeholders regarding LLRW storage, the staff will convene public meetings, as necessary.

Finally, the staff believes that annual reporting on the topic of a need for rulemaking or regulatory guidance on extended LLRW storage is no longer necessary. In its SRM on SECY-03-0223, "Rulemaking Plan: Assured Isolation Facilities," dated January 29, 2004, the Commission directed the staff to conduct an annual review that includes "the potential need for rulemaking and/or regulatory guidance for long-term storage of low-level waste in general." As highlighted herein, the staff has since annually reported to the Commission on this topic.

Because the staff has decided to stop developing a LLRW extended-storage guidance document, and given the demonstrated lack of need for a LLRW extended-storage rulemaking at this time, the staff is planning to discontinue preparing these annual reports for the Commission.

#### COMMITMENTS:

The staff has committed to the following actions in this paper:

- In accordance with the commitment in SECY-10-0164, the staff will continue to interact with stakeholders on any emerging issues that may result from the need for extended interim storage of LLRW. The staff will accomplish this task by attending meetings with industry groups, the Conference of Radiation Control Program Directors, the Organization of Agreement States, and other stakeholders.

- The staff will eliminate the formal LLRW storage guidance working group. However, the staff plans to convene periodic public meetings on the topic of LLRW storage. The staff will invite subject matter experts and other stakeholders who have participated in the working group to attend these meetings.
- The staff will stop work on a NUREG consolidating LLRW storage guidance, which arose from SECY-10-0164.
- The staff will discontinue an annual update on the need for regulations or regulatory guidance on extended interim storage of LLRW.

RESOURCES:

The staff's commitment to implement the efforts summarized herein is consistent with the strategic assessment of the LLRW regulatory program (SECY-07-0180, "Strategic Assessment of Low-Level Radioactive Waste Regulatory Program," dated October 17, 2007). The commitments discussed above can be carried out within the normal LLRW budget for fiscal year 2012.

Termination of commitments to complete a draft and final NUREG (currently tracked by SECY and due in December 2012 and December 2013, respectively) would eliminate the need for reprogramming of resources. Since there are no currently budgeted resources, affected offices would have been required to reprogram resources from other work priorities. According to the projections in SECY-10-0164, the activity could have required the expense of at least 2.0 full-time equivalent staff members spread over a number of program offices and regions over a period of at least 18 months.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper and determined that there is no financial impact. The review process included other NRC program offices for which LLRW storage is an important consideration.

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- The staff will stop work on a NUREG consolidating LLRW storage guidance, which arose from SECY-10-0164.
- The staff will stop sending an annual update on the need for regulations or regulatory guidance on extended interim storage of LLRW.

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