

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

RIN-3150-AI92

[NRC-2011-0012]

Low-Level Radioactive Waste Management Issues

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meeting; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) plans to conduct a public meeting to discuss possible revisions to the regulatory framework for the management of commercial low-level radioactive waste (LLW). The purpose of this public meeting is to gather information and receive feedback from stakeholders and other interested members of the public concerning specific proposed revisions to the Commission's LLW regulations. Consistent with Commission direction, the NRC staff plans to hold a series of three public meetings in 2012 on the proposed revisions to Commission's LLW regulations. This is the first of those public meetings.

DATES: The first public meeting will be held on March 2, 2012, in Phoenix, Arizona.

Comments on the issues and questions presented in Section V of the **SUPPLEMENTARY INFORMATION** section of this document should be submitted by July 31, 2012.

ADDRESSES: The public meeting will be held on March 2, 2012, from 8:00 a.m. to 4:00 p.m. at the Marriott Renaissance Phoenix Downtown Hotel, 50 East Adams Street, Phoenix, Arizona 85004. The NRC will accept written comments at the public meeting and welcomes active participation from those attending. You may access information and comment submissions related to this document, which the NRC possesses and is publicly-available, by searching on <http://www.regulations.gov> under Docket ID NRC–2011-0012. You may submit comments by the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2011-0012**. Address questions about NRC dockets to Carol Gallagher; telephone: (301) 492-3668; e-mail: Carol.Gallagher@nrc.gov.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

- **Fax comments to:** RADB at 301-492-3446.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michael P. Lee, Ph.D., Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001; telephone: (301) 415-6887; e-mail: Mike.Lee@nrc.gov; or Tarsha Moon, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001;

telephone: (301) 415-6745; e-mail: Tarsha.Moon@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID **NRC–2011-0012** when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, by the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC–2011-0012**.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may access publicly-available documents online in the NRC Library at

<http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “*ADAMS Public Documents*” and then select “*Begin Web-based ADAMS Search.*” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1- (800) 397-4209, (301) 415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID **NRC–2011-0012** in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at <http://www.regulations.gov> as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The Commission's licensing requirements for the disposal of LLW in near-surface [approximately the uppermost 30 meters (100 feet)] facilities reside in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste." These regulations were published in the *Federal Register* on December 27, 1982 (47 FR 57446). The rule applies to any near-surface LLW disposal technology, including shallow-land burial, engineered land disposal methods such as below-ground vaults, earth-mounded concrete bunkers, and augured holes. The regulations emphasize an integrated systems approach to the disposal of commercial LLW, including site selection, disposal facility design and operation, minimum waste form requirements, and

disposal facility closure. To lessen the burden on society over the long periods of time contemplated for the control of the radioactive material, and thus lessen reliance on institutional controls, 10 CFR Part 61 emphasizes passive rather than active systems to limit and retard releases to the environment.

Development of the 10 CFR Part 61 regulation in the early 1980s was based on several assumptions as to the types of wastes likely to go into a commercial LLW disposal facility. To better understand what the likely inventory of wastes available for disposal might be, the NRC conducted a survey of existing LLW generators. The survey, documented in Chapter 3 of NUREG-0782, Draft 10 CFR Part 61 Environmental Impact Statement (DEIS), “Licensing Requirements for Land Disposal of Radioactive Waste” (ADAMS Accession No. ML052590347) — revealed that there were about 37 distinct commercial waste streams consisting of about 25 radionuclides of potential regulatory interest. The specific waste streams in question were representative of the types of commercial LLW being generated at the time. Waste streams associated with the U.S. Department of Energy’s (DOE’s) nuclear defense complex were not considered as part of the survey, since disposal of those wastes, at that time, was to be conducted at the DOE-operated sites. Over the last several years there have been a number of developments that have called into question some of the key assumptions made in connection with the earlier 10 CFR Part 61 DEIS, including:

- The emergence of potential LLW streams that were not considered in the original 10 CFR Part 61 rulemaking, including large quantities of depleted uranium (DU), and possibly incidental wastes associated with the commercial reprocessing of spent nuclear fuel;
- The DOE’s increasing use of commercial facilities for the disposal of defense-related LLW streams; and
- Extensive international operational experience in the management of LLW and

intermediate-level radioactive wastes that did not exist at the time 10 CFR Part 61 was promulgated.

The developments previously described will need to be considered if the staff undertakes a revision of 10 CFR Part 61. Waste from the Nation's defense programs has been managed by DOE and is not subject to regulation under 10 CFR Part 61. Instead, DOE has relied on Order 435.1 to specify the disposal requirements for this waste. The current version of this Order has been in place for about 11 years and applies to management of radioactive waste within the DOE complex. Like 10 CFR Part 61, Order 435.1 places a heavy emphasis on performance assessment as part of its radioactive waste management decision-making. The DOE recently started a comprehensive revision of Order 435.1, which it plans to complete sometime in 2012.

III. Recent Commission Direction to the NRC Staff

In a March 18, 2009, staff requirements memorandum (SRM) SRM-SECY-08-0147¹, the Commission directed the NRC staff to proceed with a 10 CFR Part 61 rulemaking to specify a requirement for a site-specific analysis for the disposal of large quantities of DU including the technical requirements for such an analysis, and to develop a guidance document for public comment that outlines the parameters and assumptions to be used in conducting such site-specific analyses. In a second SRM, SRM SECY-10-0043², the staff was also directed to include blended LLW streams as part of this rulemaking initiative. Following the solicitation of early public input in 2009 (74 FR 30175; Docket ID NRC-2009-0257), the NRC staff subsequently developed a technical basis document for the rulemaking amendment (ADAMS Accession No. ML111040419), shared it with the NRC Agreement States, and proceeded to

¹ See <http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2008/2008-0147srm.pdf>.

² See <http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2010/2010-0043srm.pdf>.

develop a proposed rulemaking package. In connection with the rulemaking effort, the NRC staff also proposed a two-tier approach for evaluating compliance with 10 CFR Part 61's overall system performance objectives: an assessment that extends to 20,000-years as well as an assessment that extends beyond 20,000 years to the time of peak dose. In May 2011, the NRC staff sought public feedback (76 FR 24831) on the preliminary proposed rulemaking language (ADAMS Accession No. ML111150205), as well as the technical basis for the time of compliance recommendation (ADAMS Accession No. ML111030586) after these materials were made publicly available. (See <http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/uw-streams.html>.) Later in 2011, the staff also briefed the Advisory Committee on Reactor Safeguards (ACRS) on the preliminary proposed rulemaking language for which a Committee Letter Report dated September 22, 2011 (ADAMS Accession No. ML11256A191) was issued to the Commission.

More recently, in a SRM, dated January 19, 2012³, the Commission provided additional direction to the NRC staff concerning this particular rulemaking. Specifically, the NRC staff was directed to amend the existing draft rulemaking to include the following:

- Allowing licensees the flexibility to use ICRP dose methodologies in a site-specific performance assessment for the disposal of all radioactive waste.
- A two tiered approach that establishes a compliance period that covers the reasonably foreseeable future and a longer period of performance that is not *a priori* and is established to evaluate the performance of the site over longer timeframes. The period of performance is developed based on the candidate site characteristics (waste package, waste form, disposal technology, cover technology and geo-hydrology) and the peak dose to a designated receptor

³ See <http://www.nrc.gov/reading-rm/doc-collections/commission/comm-secy/2011/2011-0002comgeawdm-srm.pdf>.

- Flexibility for disposal facilities to establish site-specific waste acceptance criteria based on the results of the site's performance assessment and intruder assessment.
- A compatibility category for the elements of the revised rule that establish the requirements for site-specific performance assessments and the development of the site-specific waste acceptance criteria that ensures alignment between the States and Federal government on safety fundamentals, while providing the States with the flexibility to determine how to implement these safety requirements.

In the January 2012 SRM, the Commission also directed the NRC staff to engage stakeholders and other members of the interested public to discuss and finalize the NRC's approach to address the matters raised by the Commission. The Commission also noted that it would reserve judgment on the regulatory form these elements should take in any final rule following NRC staff evaluation of stakeholder input. Accordingly, the NRC staff plans to hold a series of three public meetings in March, May, and July 2012 on the proposed revisions to 10 CFR Part 61. After completion of the public outreach campaign, the staff will prepare an amended technical basis document and commence with the rulemaking. Changes will also need to be made to any 10 CFR Part 61 performance assessment companion guidance document to address the recent June 2012 direction. The completion date for submittal of a revised rulemaking package is currently July 19, 2013.

The Commission also directed the staff to gather information on the options presented in SECY-10-0165, dated December 27, 2010⁴, concerning the staff's approach to a risk-informing 10 CFR Part 61. Previously, the NRC staff sponsored an earlier workshop on SECY-10-0165, on March 4, 2011 (76 FR 10810). The staff intends to seek the public's views on earlier

⁴ See <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2010/secy2010-0165/2010-0165scy.pdf>.

stakeholder comments received as well as other proposals for a risk-informed revision of 10 CFR Part 61.

IV. Emerging Issues concerning Part 61

The NRC staff has also conducted other activities related to 10 CFR Part 61. These include revisions to the Commission's *LLW Volume Reduction Policy Statement* (76 FR 50500; August 15, 2011); and the *Concentration Averaging Branch Technical Position* (76 FR 4739; January 26, 2011). Through the course of those stakeholder interactions, the staff received comments and suggestions relevant to the more comprehensive revision of 10 CFR Part 61. For example, stakeholders have recommended changes that would lengthen the period of institutional controls and allow a site-specific intruder assessment. Some stakeholders have questioned basic fundamental tenets of 10 CFR Part 61 including the need to protect the inadvertent intruder. The staff intends to seek the public's views on these and other stakeholder comments.

V. NRC Public Meeting

The purpose of this public meeting is to gather information from stakeholders and other interested members of the public concerning the rulemaking proposals identified by the Commission in its January 2012 SRM. This overall approach is consistent with NRC's openness policy and is consistent with the type of public outreach initiative originally used by the NRC staff to develop 10 CFR Part 61. The March 2, 2012, public meeting will be organized into three parts. In the first part, the NRC staff will seek public feedback on the pros and cons of the four technical issues specifically identified by the Commission in its January 2012 SRM. In the second part, the staff will identify other technical issues identified by stakeholders bearing on the 10 CFR Part 61 rule and seek public feedback on the merits of these (additional) changes that have been suggested in connection with other on-going LLW regulatory initiatives. In the

third session, the staff will seek public feedback on the options proposed in SECY-10-0165 and accept other proposals for a comprehensive revision of 10 CFR Part 61.

The public meeting will be held on March 2, 2012, from 8:00 a.m. to 4:00 p.m. at the Marriott Renaissance Phoenix Downtown Hotel, 50 East Adams Street, Phoenix, Arizona 85004. Pre-registration for this meeting is not necessary. Members of the public choosing to participate in this meeting remotely can do so in one of two ways – online, or via a telephone (audio) connection. Instructions for remote participation in this meeting follow.

Interested members of the public can also participate in this meeting via webinar. The webinar meeting registration link can be found at: <https://www1.gotomeeting.com/register/191710105>. After registering, instructions for joining the webinar (including a teleconference number and pass code) will be provided via email. All participants will be in “listen-only” mode during the presentation. Participants will have a chance to pose questions either orally after the presentation or in writing during the webinar.

To receive a call back, provide your phone number when you join the meeting, or call the following number and enter the access code:

Call-in toll-free number (US/Canada): 1-888-942-8392, access code: 8568781.

The agenda for the public meeting will be noticed no fewer than ten (10) days prior to the meeting on the NRC’s Public Meeting Schedule Web site at <http://www.nrc.gov/public-involve/public-meetings/index.cfm>. Subsequent public meetings are tentatively planned for Dallas, Texas, on May 15, 2012 and late July in Rockville, Maryland.

Comments may be sent to the address listed in the **ADDRESSES** section of this document.

Questions about participation in the public meetings should be directed to the points of contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated at Rockville, Maryland this 15th day of February, 2012.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

/RA/

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