

## **SUMMARY OF PUBLIC COMMENTS RECEIVED IN RESPONSE TO SECY-10-0165 CONCERNING POTENTIAL CHANGES TO THE COMMERCIAL LOW-LEVEL RADIOACTIVE WASTE DISPOSAL REGULATIONS**

The Commission previously directed the staff to outline an approach to developing a risk-informed and performance-based revision to 10 CFR Part 61. In response to this direction, the staff prepared SECY-10-0165. As part of that Commission paper, the staff described plans to engage stakeholders and solicit their views on whether there should be amendments to the current 10 CFR Part 61 and if so, what the nature of those amendments should be. The staff held a public meeting on SECY-10-0165 on March 4, 2011, in Phoenix, Arizona, following the annual *Waste Management Symposium*. This was a joint meeting conducted with the U.S. Department of Energy (DOE) who, at the time, was updating its Order 435.1, which is used by DOE to manage Government-generated low-level radioactive waste (LLW). In association with this meeting, the staff also published a *Federal Register* (FR) notice (76 FR 10810; dated February 28, 2011) requesting comments on the regulatory options described in SECY-10-0165. Both a transcript and meeting minutes are available through the Agencywide Document Access and Management System (ADAMS), Accession Nos. ML110900072 and ML12249A215, respectively. Later, the staff used its 2012 public meetings held in response to Staff Requirements Memorandum (SRM)-COMWDM-11-0002/COMGEA-11-0002<sup>1</sup> to also seek feedback on the options and issues described in SECY-10-0165. Only a few comments were received concerning the options proposed in SECY-10-0165 at these meetings.

The comments received on SECY-10-0165 are discussed below; the comments received in response to SRM-COMWDM-11-002/COMGEA-11-002 are discussed in Enclosure 3.

### COMMENTS COLLECTED AT PUBLIC MEETINGS:

Stakeholders provided only a few comments on SECY-10-0165 at the March 2011 public meeting. Recommendations for revising the 10 CFR Part 61 regulatory framework included the following: either limiting the changes to those defined by SRM-SECY-08-0147 (i.e., to introduce a site-specific performance assessment and human intrusion analysis requirement to the rule), or adopting the International Atomic Energy Agency (IAEA)<sup>2</sup> system for managing all radioactive waste streams (Option 4). Other stakeholders suggested that the U.S. Nuclear Regulatory Commission (NRC) staff examine how other countries manage LLW before reaching any decision on how to revise the regulations.

Other stakeholders suggested that before proposing any changes to the LLW regulations, the staff should first re-examine the technical assumptions originally used to develop the 10 CFR Part 61 regulations in the late 1970s and early 1980s. The results of this re-examination would form the basis for deciding how to revise 10 CFR Part 61. Another stakeholder suggested that the NRC and DOE adopt essentially identical methods to regulate LLW. Finally, stakeholders recommended that the NRC partner with Agreement States as part of any rulemaking endeavor.

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<sup>1</sup> See FR notices dated February 22, 2012 (77 FR 10401), May 8, 2012 (77 FR 26991), and July 11, 2012 (77 FR 40817).

<sup>2</sup> See International Atomic Energy Agency, "Classification of Radioactive Waste – General Safety Guide," Vienna, International Atomic Energy Agency Safety Standards Series No. GSG-1, 2009.

In 2012, the staff participated in six events, including three public meetings sponsored by the NRC. Most of the public comments at these meetings were directed to the Commission's January 2012 SRM, but the staff also received a few comments on the proposals described in SECY-10-0165. Most of the comments came from representatives of *EnergySolutions* and Waste Control Specialists. Representatives for both companies stated that SECY-10-0165 had been overtaken by the Commission's most recent direction in SRM-COMWDM-11-0002/COMGEA-11-0002, specifically the proposed requirement to allow licensees to establish site-specific Waste Acceptance Criteria (WAC) as an alternative to the existing § 61.55 waste concentration tables. The companies stated that the January 2012 SRM, which essentially selected Option 3 (WAC) from SECY-10-0165, effectively ended further discussion on the SECY-10-0165 proposals. Once the collective rulemaking direction provided in SRM-SECY-08-0147 and SRM-COMWDM-11-0002/COMGEA-11-0002 has been satisfied, these stakeholders believe that no further revisions to 10 CFR Part 61 are necessary.

#### WRITTEN COMMENTS:

As of September 1, 2012, the staff received six sets of detailed comments in response to SECY-10-0165. In their joint comments, two nuclear consultants suggest that, subject to certain specific proposed changes they recommend, no comprehensive revision is necessary to the Commission's commercial LLW regulations. Upon review, the staff determined that their proposed changes (ML12222A141) align with Commission direction contained in SRM-SECY-08-0147 and SRM-COMWDM-11-0002/COMGEA-11-0002, with one key exception: they propose changing the compatibility designation of § 61.58 ("Alternative requirements for waste classification and characteristics"), currently category 'D' for compatibility to some more restrictive (but unspecified) compatibility designation. In its comments, *Louisiana Energy Services* (ML110960075) suggested that the existing version of 10 CFR Part 61 provides adequate protection of public health and safety and that no amendments are needed. In a third set of comments (ML11111A135), *The Council on Radionuclides and Radiopharmaceuticals* (CORAR) suggests that the Commission's LLW regulations are outdated and need modernization consistent with current LLW disposal practices and waste streams. In another set of comments (ML12208A094), CORAR later recommended that the Commission approve a comprehensive revision to 10 CFR Part 61 that would align the Commission's commercial LLW regulations with the radioactive waste classification system recommended by the IAEA—this proposal corresponds to Option 4 in SECY-10-0165. This alignment, in CORAR's view, would also lead to the development of a designated disposal site for large quantities of depleted uranium in an intermediate-depth [geologic] setting (CORAR's preferred disposal scenario). CORAR also noted that an intermediate-depth disposal site could also be used for other long-lived waste streams such as greater-than-Class C LLW.<sup>3</sup> Another set of comments, submitted by a private citizen, pertained to the National high-level radioactive waste program at Yucca Mountain, Nevada, and were outside the scope of the staff's February 2011 public comment request. Comments submitted on behalf of *The Health Physics Society* (ML12198A289) supported the option that would allow licensees to establish site-specific WAC for their respective disposal facilities and in doing so, essentially embrace the approach used by DOE to manage government-owned LLW. In the last set of written comments, *EnergySolutions* (ML12222A139) expressed the view that no

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<sup>3</sup> The staff also received several similar comments along this line in from stakeholders in connection with SRM-COMWDM-11-0002/COMGEA-11-0002.

additional revisions to 10 CFR Part 61 beyond those already identified in the Commission's January 2012 SRM were necessary and that SECY-10-0165 should be withdrawn. *EnergySolutions* also suggested that the staff's longer-term assignment to update the § 61.55 waste classification tables (Option 1) was not necessary because the ongoing rulemaking to introduce an explicit performance assessment requirement would be sufficient to protect public health and safety.

ANALYSIS:

As summarized above, the staff determined that these comments support its recommendation to proceed with the integrated rulemaking and to cease efforts associated with SECY-10-0165. The integrated rulemaking would achieve the Commission's direction in SRM-COMWDM-11-002/COMEGEA-11-002. Additionally, consistent with earlier Commission direction in SRM-SECY-08-0147, the staff plans to budget for a rulemaking to risk-inform the § 61.55 waste classification tables which is also addressed in SRM-COMWDM-11-002/COMEGEA-11-002.