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August 2, 2012

Ms. Cindy K. Bladey
Chief, Rules, Announcements and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Request for Comment on Low-Level Radioactive Waste Regulatory Management Issues, 77 Federal Register 40817, July 11, 2012 [Docket No. NRC-2011-0012]

Project Number: 689

Dear Ms. Bladey:

On behalf of the nuclear industry, the Nuclear Energy Institute (NEI)¹ appreciates the opportunity to provide comments on low-level radioactive waste (LLRW) regulatory management issues described in the subject Federal Register notice. Our comments have been developed from input from nuclear industry staff responsible for LLRW management and experts in technical analysis for licensing and regulation of LLRW disposal sites. Our comments have been informed by the discussions at a series of public meetings held by the Nuclear Regulatory Commission (NRC) earlier this year to hear stakeholder views on the LLRW regulatory management issues.

Part 61 Rulemaking

The nuclear industry supports the intent and direction outlined in the November 3, 2011, Commission Action Memorandum, *Revision to Part 61* (COMWDM-11-0002/COMGA-11-0002), to "change the current rulemaking regarding site-specific analysis in order to bring a clearer risk-informed approach to Part 61." We agree that this approach can eliminate the need "for the far more complex rulemaking" that has been envisioned in previous NRC staff recommendations and Commission direction.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. 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, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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We suggest that the rulemaking be focused on (1) incorporating the latest International Commission on Radiological Protection (ICRP) methodologies; (2) using updated assumptions that are more reflective of the extensive domestic and international operational experience since the time that Part 61 was promulgated; and (3) addressing findings and recommendations of the Risk Management Task Force in its April 2012 report, *A Proposed Risk Management Regulatory Framework*, that are specifically related to low-level radioactive waste. The rulemaking should be coordinated with anticipated rulemaking to Part 20 to achieve consistency in radiation protection methodologies and alignment between Part 61 and provisions in Part 20 that are directly applicable to low-level radioactive waste management and disposal.

We encourage the NRC to heed the advice of the Risk Management Task Force to "undertake early and substantive outreach to Agreement States (since all existing LLW disposal sites are in Agreement States)..."

As has been concluded in multiple NRC decisions, documents and communications, the current Part 61 provides for safe disposal of low-level radioactive waste. Therefore, we do not believe that there is an urgent need for completing Part 61 rulemaking, especially in light of other, more pressing regulatory priorities. However, the significant changes and increased experience in LLRW management, enhancements to risk assessment techniques, and updating of radiation protection methodologies that have occurred since the promulgation of Part 61 support a commitment of time and resources on the part of the NRC, the states, licensees, and other stakeholders to pursue a well-focused rulemaking on a reasonable schedule (e.g., 5 years, as suggested by the Risk Management Task Force and consistent with the suggested plans for Part 20 rulemaking).

In regard to the specific low-level radioactive waste regulatory management issues identified in the subject Federal Register notice, we offer the following comments.

Use of ICRP methodologies: The use of the best current understanding in dose analysis is a common issue across Federal Agencies in general and NRC regulations in particular. The resolution of this issue should ideally be addressed as part of a larger Federal effort to update all Federal regulations and guidance on the analysis of radiation dosimetry. Such an effort should include general NRC regulations (e.g. 10 CFR Part 20) as well as EPA regulations (e.g. 40 CFR 141 and 40 CFR 190) and Federal guidance (e.g. Federal Guidance Reports 11, 12, and 13). A coordinated effort to update to the most recent ICRP methodologies would lead to greater long-term stability and decreased regulatory uncertainty and inconsistencies.

A two-tiered approach for compliance: Current NRC guidance on low-level waste time frames (NUREG-1573) provides adequate guidance in the area of time frames, and is allowing current regulatory decision making at the State level to proceed without undue difficulties. Therefore, rulemaking or additional guidance is not urgent at this time. However, there are advantages to the use of a two-tiered time frame system, in providing adjudicatory defensibility and regulatory

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stability. NRC is encouraged to explore the use of the two-tiered approach as part of a longer term strategy to update 10 CFR Part 61.

Flexibility to establish site-specific waste acceptance criteria: 10 CFR Part 61.58 provides the flexibility for individual sites and States to propose performance-based waste acceptance criteria. There is therefore no need for urgent action on this issue. In the long term, NRC may consider revising 10 CFR Part 61 to remove the waste classification system from the regulation itself, including it instead in regulatory guidance. This approach would increase the flexibility of the States to respond to specific license conditions and requests at the State level.

Compatibility category for alignment among the States: The nuclear industry recognizes and appreciates the Agreement States' role and responsibility for the licensing and oversight of existing commercial low-level radioactive waste disposal facilities in this country. As such, NRC should better integrate the Agreement States as co-regulators and critical decision makers early in the process when addressing generic LLW management issues such as the ones discussed at the July 19, 2012 public meeting. For example, while NRC has apparently discussed these matters with the affected Agreement States, such discussions have not occurred with stakeholders in a public forum. The experiences and perspectives of South Carolina, Washington, Utah and Texas officials as the regulators of LLW disposal facilities are invaluable and absolutely necessary when considering any Part 61 rulemaking or related guidance development. Finally, each Agreement State is bound by its formal Agreement with NRC to promulgate a rule that is determined by NRC to be adequate from a public health and safety perspective and compatible with NRC's rule. Therefore, NRC, the Agreement States and all stakeholders would benefit from more open and transparent NRC-Agreement State deliberations on these matters.

Thank you for the opportunity to provide our comments on these issues. Should you have any questions, please feel free to contact me at 202-739-8111; rla@nei.org or Janet Schlueter at 202-739-8098; jrs@nei.org.

Sincerely,



Ralph L. Andersen

c: Mr. Larry W. Camper, FSME/DWMEP, NRC
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