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Low-Level Waste Disposal

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General Comment

See attached file(s)

Attachments

Part61comments

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555–0001
ATTN: Rulemakings and Adjudications Staff.

HEAL UTAH Comments on: "Preliminary Rule Language For Proposed Revisions To Low-Level Waste Disposal Requirements (10 CFR Part 61)"

Docket ID NRC–2011– 0012

To Whom It May Concern:

The following are comments on Preliminary Rule Language from NRC staff on proposed revision to Part 61.

We appreciate the opportunity to offer feedback on these draft rules.

1. Comment deadline extension. We request that the comment deadline be extended. Many parties have signalled that the 30 day deadline ending January 7 was too short, given the extent of proposed changes and volume of technical analysis constituting the regulatory basis. Because there were compounding factors, including the holiday, plus the recent deadline regarding the waste confidence rule, we believe an extension of this comment deadline another 30 days is fully justified.

2. The WAC approach decreases public confidence. Our primary comment is that **we do NOT believe that Part 61 should be modified to provide an alternative to the waste class tables, namely the proposed Waste Acceptance Criteria** (WAC), an approach based upon site specific performance assessments for all low-level waste. Creating this alternative pathway for waste acceptance will lead to substantially diminished public confidence in the safety of waste disposal here in Utah and nationally.

There are several reasons for this:

a. Economic incentive to manipulate models to justify a pre-determined outcome. Licensees, who clearly have a strong economic incentive to justify the acceptance of nuclear waste, will pay for site-specific performance assessments. They hire consultants, of whom there are only a few qualified firms, to perform these studies. Thus, it is reasonable for the public to conclude that such performance assessments, paid for by a nuclear waste company or operator, can be "gamed" or manipulated to justify the acceptance of particular nuclear waste streams that the licensee finds economically valuable. The public is rightfully concerned that the hired consultant running the models "must" reach the conclusion that waste streams are acceptable for disposal if that consultant wishes to keep receiving contracts.

b. Non-transparent site specific models. Modern site-specific probabilistic performance assessments are incredibly complex and non-transparent. They rely on thousands of assumptions about site conditions as well as what future conditions will be like. Those assumptions are often built into intricate computer models, which, even if they are made available to the public, are very difficult for even informed public interest groups like HEAL Utah to interpret and evaluate.

In addition, as we've seen, the modeler chosen by a licensee to complete a site-specific performance assessment has many ways to "bury" important assumptions that impact whether a particular waste stream is deemed to be "safe for disposal" at a given site. And, as noted above, the modeler also has an economic incentive to "justify" for the licensee that economically valuable waste streams can be taken at a disposal site. Otherwise, the modeler reasonably risks losing future modeling business with the licensee. It's also not clear that agreement states have the capacity, expertise, time, or resources to adequately review such complicated performance assessments. There is a reason that states have relied upon more rigid tables to make decisions about nuclear waste disposal.

c. Federal review and approval of site specific performance assessments and waste acceptance criteria. The proposed rules states that WACs should be reviewed and approved by the Nuclear Regulatory Commission, rather than state regulators. In the case of Utah, which accepts the vast majority of the country's commercial low-level nuclear waste, this change would essentially remove Utah officials from making health and safety evaluations and decisions
about waste streams coming to the state. We believe this situation would be unacceptable to the vast majority of Utahns and our elected leaders. The State of Utah and its people are those who will have to live with the nuclear waste site and its ongoing liability and costs – not the Federal NRC from its seat in Maryland. Therefore, the State of Utah, with robust participation from the Utah public, is the appropriate decision-maker with regard to the evaluation of nuclear waste streams coming to Utah.

d. Utah's ban on Class B and C nuclear waste. Most disturbingly, the Waste Acceptance Criteria approach appears to be a Federally-designed attempt to undermine a Utah state ban on Class B and C nuclear waste, passed by the State Legislature in 2005. Utah Code 19-3-103.7 states, "No entity may accept in the state or apply for a license to accept in the state for commercial storage, decay in storage, treatment, incineration, or disposal: … class B or class C low-level radioactive waste…." If the WAC approach allows EnergySolutions, a Utah licensee, to seek and obtain permission from the Federal NRC to accept waste that meets the Class B or C definitions, then the state ban on Class B and C waste will have effectively been overridden by NRC regulations. That ban, it is worth pointing out, was widely supported in Utah: The vote to pass it was 26-0 in the Utah Senate and 57-13 in the Utah House, before being signed by Gov. Jon Huntsman. Polls at the time showed that an astounding 86 percent of Utahns favored the ban. For federal officials to overturn that ban is an unacceptable outcome, and one that could have farreaching

and unpredictable consequences. For instance, could angered Utah officials ultimately use their authority through the Northwest Interstate Compact to stop the acceptance of all low-level waste from outside the Compact, as a reaction to perceived Federal overreach and interference with state's rights? That would certainly be one approach that our organization would consider advocating if this situation comes to pass.

3. Agreement states should be able to choose. While we continue to oppose the inclusion of the WAC alternative, we urge the Commission, if it chooses to move forward, to **allow states to choose which evaluation system it will regulate under**, rather than licensees. The proposed revisions seem to clearly indicate that it is Licensees that will be allowed to choose, and not agreement state regulators.

Certainly, a licensee, who has a clear economic imperative to push for the acceptance of new waste streams, should not be in the position to dictate the terms of its regulation. In Utah, the Division of Radiation Control and Department of Environmental Quality have already signalled that they wish to retain the current practice of regulating low-level waste via the waste class tables. EnergySolutions should not be able to choose the circumvent the waste classification system -- that is, submit a performance assessment and associated WAC to the NRC to justify the acceptance of waste that is Class B or C or Greater-Than-Class-C.

4. Compliance and performance periods for long-lived waste. We do not believe that long-lived waste streams such as concentrated depleted uranium should only be modeled for a compliance period that is "reasonably foreseeable," for the simple reason that concentrated depleted uranium does not have a "reasonably foreseeable" hazard life. We believe "safe disposal" can only be demonstrated if the public will be protected from unsafe doses over the hazard life of the waste stream being evaluated.

In addition, we believe the period for which wastes should be evaluated most strictly and precisely should be at least 20,000 years, as the NRC staff initially proposed, rather than the 10,000 year period current contemplated in the draft rule-making. Furthermore, the preliminary rule language that proposes a standard for keeping long-lived waste exposures "as low as reasonably achievable" appears meaningless -- reasonably low as compared to what other alternative? We have argued from the beginning that long-lived wastes like large quantities of concentrated depleted uranium must be disposed in a manner consistent with that required for greater-than-class-C waste -- that is, in deep burial, as opposed to shallow land burial.

5. Mandatory classification labeling. The draft regulations state, "§ 61.57 Labeling.
Each package of waste must be clearly labeled to identify any information required by the land disposal facility's criteria for waste acceptance developed according to § 61.58 of this part. *Each package of waste disposed in a land disposal facility with waste acceptance criteria developed in accordance with the waste classification requirements must indicate whether it is Class A waste, Class B waste, or Class C waste, in accordance with § 61.55.*

We read this, particularly the second italicized sentence, to indicate that all shipments must clearly state whether they are A, B or C waste, regardless of whether that licensee and state are operating under the waste class tables or the WAC criteria. We urge the Commission to clarify this sentence if need be: The first sentence calling for labelling “required by the land disposal facility’s criteria for waste acceptance” might suggest a WAC-using facility could decline to include the waste classification information on the label.

In the interest of transparency, safety and the public right to good information, the Commission must clearly require classification labeling for all shipments.

6. Environmental impact statement. We believe that the extent of the rulemaking change should trigger an Environmental Impact Statement.

7. Catch-all Class A. We continue to strenuously object to the idea that all radionuclides not listed in Tables 1 or 2 be designated as Class A waste. This designation is unnecessarily confusing, as it implies that potentially unanalyzed waste streams only require the least stringent regulatory controls.

8. Lack of clear health-based regulatory standards for long-lived waste streams. Decisions about the acceptability of various waste streams often ends up being litigated in court. When this happens, all parties look to the law to determine what the relevant standards were and whether they were met or not. In this case, the preliminary language proposed by the staff -- especially with regard to long-lived waste streams -- does not appear to give clear enough standards for any regulator, NRC or agreement state, to effectively deny a request. The licensee can always claim that the long-lived waste stream was treated in such a way as to keep doses “as low as reasonably achievable” in the future.

Thanks for the opportunity to comment.

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HEAL Utah

From:	Gallagher, Carol
To:	RulemakingComments Resource
Subject:	Comment on Disposal of Unique Waste Streams
Date:	Tuesday, January 08, 2013 5:39:54 PM
Attachments:	NRC-2011-0012-DRAFT-0051.pdf

Attached for docketing is a comment from Christopher Thomas on the above noted document (77 FR 72997; December 7, 2012) that I received via the regulations.gov website on January 7, 2013.

Thanks,
Carol