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Zak Covar, *Executive Director*



12/07/2012
77FR 72997



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 7, 2013

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

Re: Docket ID NRC-2011-0012

Dear Sir or Madam:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to respond to the United States Nuclear Regulatory Commission's (NRC) proposed revisions to 10 CFR Part 61 published in the December 7, 2012, edition of the *Federal Register* entitled: "Site-Specific Analyses for Demonstrating Compliance With Subpart C Performance Objectives."

Enclosed please find the TCEQ's detailed comments relating to the NRC's proposed revisions referenced above. If you have any questions concerning the enclosed comments, please contact Mr. Brad Broussard, Radioactive Materials Division, Office of Waste, (512) 239-6380, or at brad.broussard@tceq.texas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Zak Covar".

Zak Covar
Executive Director

Enclosure

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RULES AND DIRECTIVES
BRANCH
USNRC

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM -03
Add= A. Carrera (gnt)

Texas Commission on Environmental Quality Comments
on Revisions to 10 CFR Part 61:
Licensing Requirements for Land Disposal of Radioactive Waste

Waste Acceptance Criteria

Proposed 61.7 Concepts

(d) Waste acceptance. Demonstrating compliance with the performance objectives also requires a determination of criteria for the acceptance of waste. The criteria can be determined from the results of the site-specific analyses that demonstrate compliance with the performance objectives for any land disposal facility or, for a near-surface disposal facility, the waste classification requirements of Subpart D of this part.

Comment: This proposed provision seems to allow waste acceptance criteria to be established from the results of a site-specific analysis for any “land disposal facility.” In addition, it appears that in the context of this revision a “near-surface disposal facility” is different than a land disposal facility. This implies that waste acceptance criteria established from a site-specific analysis is the only approach that has to be taken for meeting the performance objectives. However, Section 5.2.7 of the Part 61 Regulatory Basis document states the NRC is proposing Option 3 - *Generic Waste Classification or Site-Specific Waste Acceptance* where a hybrid approach is taken that would allow licensees to use *either* the results of the site-specific technical analyses set forth in 10 CFR 61.13 *or* the waste classification requirements in 10 CFR 61.55.

The proposed language in 61.7(d) should be clarified in guidance or expanded in rule to indicate that this hybrid approach should incorporate both the waste classification tables and an approved site-specific analysis in determining waste acceptance criteria.

Period of Performance

Proposed 61.2 Definitions

Performance period is the time after the compliance period for disposal facilities during which the performance objectives specified in §§ 61.41(b) and 61.42(b) must be met.

Part 61 Regulatory Basis Document, Section 5.1.7, *Options Considered* states that:

“The analyses for the second tier would use: (a) a screening process to identify if long-term analyses are necessary, and if applicable, (b) long-term, site-specific analyses to peak dose (limited to 1 million years). The performance requirement for the long-term analyses would be to maintain effects to the public ALARA (as low as reasonably

achievable). The analyses that could be used for the second tier would be described in guidance, not in regulations. The regulations would only describe the analyses at a high level. Appropriate technical analyses for each would be described in guidance. The screening analysis would be based on a conservative approach (e.g., peak ingrowth of daughter isotopes, assume no retardation during transport, defined scenarios) to manage long-term uncertainties and ensure that public health and safety is protected. If the screening analysis results show the performance objectives will not be met, then inventory limits could be established based on the screening analysis or long-term, site-specific analyses could be performed to demonstrate that public health and safety will be protected. Using this framework, the analyses can be risk-informed. The standard for considering if the effects from the second tier are acceptable would be to maintain doses to the public ALARA.”

Comment: The new proposed definition of performance period indicates that the performance objectives of §§61.41(b) and 61.42(b) must be met. The standard that has to be met for the second tier analysis is still too subjective. Guidance developed that provides instruction on conducting a second tier analysis should state how the ALARA analysis is demonstrated. This may provide better direction for regulators as to how to implement the proposed definition and the proposed §61.41(b) and §61.42(b) revisions.

Compatibility

Section 5.4 of the Part 61 Regulatory Basis document provides limited discussion on compatibility categories for new provisions relating to *performance period*, *compliance period*, *intruder assessment*, *long-lived waste*, *performance assessment*, and waste acceptance criteria. It only states that compatibility designations be assigned that “. . . ensure 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. . . .”

Comment: The current compatibility category for §61.41 is category A. If the NRC chooses to maintain this category with the new revisions to §61.41, specifically performance period analyses demonstrating ALARA, the NRC should provide direction in the Part 61 supporting guidance for conducting an ALARA analysis that meets the proposed requirements in §61.41(b).

The current compatibility category for the waste classification tables in §61.55 is category B. If site-specific analysis is used to determine waste acceptance criteria, the NRC should maintain the same compatibility category.

The current compatibility category for §61.2 relating to definitions is category B. However, §61.7 has no compatibility category but the proposed revisions address conducting a performance assessment, an intruder assessment, site-specific analyses for long-lived waste, and in developing waste acceptance criteria. Careful consideration should be given to the compatibility category for §61.7. Stakeholders should be provided

the opportunity to provide input on compatibility categories as they are determined by the NRC Standing Committee on Compatibility.