

Gallagher, Carol

From: Matt Pacenza <matt@healutah.org>
Sent: Monday, September 15, 2014 1:46 PM
To: Gallagher, Carol; Wong, Melanie
Cc: Christopher Thomas
Subject: Docket ID NRC-2014-0080 Comments on "Strategic Assessment"
Attachments: HEAL Utah strategic assessment comments.docx

Attached you'll find HEAL Utah's comments on Docket ID NRC-2014-0080. Please confirm receipt of these comments.

We appreciate the extension of the comment period to give us time to prepare these.

Thanks!

Matt.

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Add= *m. Wong (mlw)*



To: Nuclear Regulatory Commission

From: Matt Pacenza, Policy Director, HEAL Utah

Re: Comments on Strategic Assessment of its Low-Level Radioactive Waste (LLRW) regulatory program (Docket ID NRC-2014- 0080)

Date: September 15, 2014

Thanks for offering us the opportunity to comment on the Strategic Assessment. Allow us to raise several issues that we think are critical to reflect upon as the NRC moves forward with its ongoing efforts to review and revise LLRW plans and rulemaking.

Please consider the following carefully, to continue to allow states to effectively regulate disposal facilities within their borders, and to permit the public and NGOs to adequately monitor these activities.

1. Recognize Flaws and Limits of WAC approach.

The movement towards Waste Acceptance Criteria (WAC) and Site Specific Performance Assessments (PAs) has been guided by the desire to shift policy away from rigid rules and categories towards a flexible system that focuses on detailed technical reviews. These, it is argued, can more accurately determine if a particular waste can be disposed of safely in a particular way in a particular location.

On the face of it, these are worthy goals and a reasonable strategy. However, in our experience, the emphasis on WAC and PAs has one clear outcome that needs to be understood and addressed: It makes it much more difficult for states to make LLRW decisions and, critically, for the public to be involved in those.

The advantage of the LLRW system that has been in place is that by drawing bright lines and creating clear categories, it makes it easier for policymakers to institute policies and pass laws that reflect their values and policy judgments. So, for example, in Utah, our State Legislature decided that it was prudent to allow waste that would pose a hazard for a century or more (class A) but not waste that would

remain hazardous for 300 to 500 years (class B and C.) Thus, a state ban passed in 2005.

The robust debate over that ban, which took place over several years in a range of hearings and meetings, including in the press, allowed many stakeholders – from representatives of the nuclear waste industry itself to state legislators to ordinary citizens – to express an opinion. The result is a system that may not be terribly flexible, but it's one that reflects the policy judgments of policymakers who listened to a process that incorporated the perspectives of many.

Let's contrast that with a WAC process based upon PAs. Of course, EnergySolutions turned in a PA in 2011 that sought to make the case that near surface disposal at the Clive site is appropriate and safe for more than 700,000 tons of Depleted Uranium.¹

That PA is comprised not just of thousands of pages of documents, but a complex proprietary computer model. Built into that model – and the thousands of pages of documents – are literally hundreds and hundreds of assumptions, some critical, that all led the EnergySolutions PA to conclude that disposing DU in Utah is safe.

The state of Utah has an experienced staff when it comes to LLRW matters and overseeing the Clive site. However, they simply didn't have the staff-power or the time or the expertise to unpack everything in the DU PA. And so they hired an outside consultant who has spent over a year reviewing the PA, a process that will conclude shortly.

Who else in Utah has had a chance to review the PA? Frankly, we doubt anyone has outside of a few state employees, the consultant and those of us here at HEAL Utah. And even we – a professional grassroots organization with a decade-plus experience in nuclear waste matters (a unique institution in the United States) – have struggled to review more than a fairly small percentage of the PA. We think we've raised some important issues, but realistically, there are hundreds of pages of the PA that we don't have the technical expertise to understand.



And, for what it's worth, we're very lucky in Utah, since we have a state agency that actually makes it fairly easy for us to review documents like the PA. The documents may be dauntingly long and complex, but at least they are available.

Where else in the U.S. are large quantities of Depleted Uranium being considered for disposal? Texas. HEAL has been trying on and off for several months to understand more about that state's plans – how their DU would be stored, in what conditions, and what assumptions went into their decision announced last month to allow DU at WCS's facility in Andrews.

¹ That initial PA is found on this page --
<http://www.deq.utah.gov/businesses/E/EnSolutions/depleteduranium/performas sess/index.htm> -- beneath the June 11, 2011 date.

We emailed the Media Relations representative for the Texas environmental agency seeking a link to the WCS Performance Assessment. Here is her response (in a screenshot form):

 **Andrea Morrow**
to me ▾

11:50 AM (3 hours ago)  

The performance assessment model belongs to WCS. The TCEQ reviews the model and has produced a large report as part of that review. It is not available online due to size however, you can file an Public Information Request for the information by going here: <https://www.tceq.texas.gov/adminservices/data/reqinfo.html> and following the instructions. PIRs are not handled in this office. Bear in mind, this is a lengthy document so you will want to budget accordingly.

Regards,
Andrea

Andrea Morrow
TCEQ Media Relations
512-239-5011 phone



And so, not only does Texas not even make its review of the PA available to the public – let alone the PA itself – it makes very clear that even asking to review it will be very expensive.

This disturbing example strikes to the heart of the fundamental problem with building a LLRW decision-making system around WAC and PAs: It serves to make it much more difficult for the public to have any meaningful input into critical nuclear waste decision-making processes. Reading and comprehending thousands of pages of documents and complex computer models – let alone offering comment on those – is far beyond the reach of nearly everyone. And, then, of course, we have states that apparently don't even plan to make those documents available to the public without a hefty sum of money. This situation represents government at its worst – incomprehensible and out of the public's reach.

Allow us to make one more point about the WAC and PA approach: It puts an incredible amount of power and input into the hands of consultants. The consultants who develop the PAs are, of course, paid by the waste disposal company. There are very few such companies, and very few such consultants. It is fundamentally in the interest of the consultant to "game" the PA, by manipulating the thousands of assumptions built into them, and to decide which scenarios are and are not considered, to ensure that the model reaches the conclusion which the consultant is being paid handsomely to reach. To not do so, assuredly, would affect the consultant's ability to win the next big contract. When state and federal regulators

and policymakers make critical LLRW policy judgments, they do so based upon what one hopes are less self-interested criteria.

In short, we'd like to see the NRC, as parts of its Strategic Assessment, ensure that its overall shift towards "flexibility" and WAC and PAs doesn't make it more difficult for states to make their own LLRW policy decisions – and for the public to have significant input on LLRW license and permitting decisions.

2. Classify Depleted Uranium.

We continue to believe it critical that the Commission budget staff time to determine whether Depleted Uranium is Class A, B, C, or Greater Than Class C waste. As we make clear above, we think the shift towards WAC and PAs has clear disadvantages, when it comes to public participation in these critical processes.

Allow us to raise a second, related issue: The WAC approach is based in part upon the notion that local decisions are best made based upon local factors, not rigid national rules that can't incorporate the complexity of any given site, or waste stream.

In Utah, as both our Governor and the head of our Division of Radiation Control have made very clear in comments to the NRC, state officials would prefer to retain the LLRW classification system to help preserve prior state decisions on the kinds of waste allowed into the state. Many Utahns are alarmed by the notion that new LLRW rules moving away from the classification system could also include a compatibility category 'B' applied to the most significant provisions, thus allowing EnergySolutions a pathway to override Utah's ban on Class B and C wastes.

Given the stated desire of Utah officials to retain the classification system, we would urge the NRC to prioritize a classification of Depleted Uranium. It is, we believe, the most significant "unique waste" out there, and it's a baffling gap in regulation to not incorporate it into a regulatory system that Utah—one of the most important states in the LLRW arena—wishes to preserve.

Thanks again for taking comment on the Strategic Assessment. Please feel free to contact us at the below with any questions.

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