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Office of Administration
Mail Stop: 3WFN-06-44M
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

5/15/2014
79 FR 27772

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Subject: Request for Comments on U.S. Nuclear Regulatory Commission (NRC) Strategic Assessment of Its Low-Level Radioactive Waste (LLRW) Regulatory Program – Docket No. NRC-2014-0080

Reference: (1) Low-Level Radioactive Waste Regulatory Program; Request for Comments (NRC-2014-0080), 79 Fed. Reg. 27772 (dated May 15, 2014);

(2) Low-Level Radioactive Waste Regulatory Program; Request for Comments (NRC-2014-0080), 79 Fed. Reg. 38796 (dated July 9, 2014).

As summarized in Reference (1), the NRC completed a strategic assessment of its regulatory program for LLRW in 2007 and published the results in SECY-07-0180 (ADAMS Accession No. ML071350291). The NRC staff indicates that a list of 20 key activities was identified following public comment on the strategic assessment. The NRC notes that it has made progress in completing the list, but its national LLRW program continues to evolve and changes will need to be made going forward. In order to properly set the direction for its program over the next several years, the NRC staff will be developing an updated strategic assessment. Consequently, as stated in Reference (1), the NRC staff requested public comment on "what changes, if any, should be made to the current LLRW program regulatory framework, as well as specific actions that the staff might undertake to facilitate such changes." 79 Fed. Reg. at 27773. Reference (1) also posed specific questions for public comment. *Id.* The original Federal Register notice sought comments by July 14, 2014; however, as indicated in Reference (2), the date was extended until September 15, 2014.

Louisiana Energy Services, LLC (d/b/a URECO USA or UUSA) appreciates the opportunity to provide comments. By way of background, in 2006, UUSA was issued a combined operating license by the NRC to construct and operate a gas centrifuge uranium enrichment plant near Eunice, New Mexico. The UUSA facility commenced operations on June 11, 2010. Construction of the project to increase the enrichment capacity continues today.

UUSA is the first new uranium enrichment facility built in the United States in over 30 years and the first facility to use centrifuge enrichment technology in the US. UUSA is a wholly owned subsidiary of URENCO Ltd. (URENCO), an independent international energy and technology group with its head office in the United Kingdom and a world leader in uranium enrichment services for commercial nuclear power plants. URENCO also operates gas centrifuge enrichment facilities in Germany, the Netherlands, and the United Kingdom. The UUSA facility uses URENCO's centrifuge technology. As the only entity currently operating a commercial uranium enrichment facility in the US, UUSA is keenly interested in assuring that NRC's LLRW program, going forward, is appropriately structured and positioned to ensure public safety yet at the same time properly balance and support the needs of the commercial nuclear industry. UUSA

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appreciates the opportunity to comment and, in this regard, we provide our comments in the enclosed attachment.

Please contact Stephen Cowne, UUSA's Head of Compliance, at (575) 394-5253 if you have questions about the comments.

Sincerely,

A handwritten signature in black ink that reads "Stephen R. Cowne". The signature is written in a cursive style with a large, stylized 'S' and 'C'.

Stephen R. Cowne
Head of Compliance

**Comments of UUSA on NRC's
Strategic Assessment of Its Low-Level Radioactive Waste Regulatory Program**

The NRC posed five (5) specific questions in its request for comments (79 Fed. Reg. at 27773-74). UUSA provides comments in response to select questions below.

Question 2: What vulnerabilities or impediments, if any, are in the current regulatory approach toward LLRW disposal in the U.S. that need to be addressed in order to strengthen the NRC's ability to ensure safe and secure LLRW disposal, improve effectiveness of its regulations, and assure regulatory stability and predictability while allowing flexibility in disposal options?

UUSA is concerned that the NRC will allow dissimilar implementation standards or requirements (*e.g.*, acceptance criteria) at different disposal sites. Such a situation might occur through standards or requirements established directly by the NRC, or by allowing states or other federal agencies (such as the Department of Energy) the flexibility to create localized standards or requirements. In either case, the result would create an uneven, mismatched playing field for customers of the various disposers. Responsible and fair regulation should give customers a reasonable opportunity for multiple choices of disposal locations/disposers and, thus, competitive disposal cost structures. Although there may be some compelling reasons for providing a certain level of localized/variable standards or requirements, such reasons should not be allowed to overshadow the legitimate business needs of companies, like UUSA, that have committed significant fiscal resources and need a level and reliable business playing field out into the future. Without a level and reliable business playing field, long-term business investment decisions and organizational strategies could be severely hampered. As has been demonstrated over and over again, federal agencies such as the NRC can, and have been able to fashion regulatory structures that not only protect public health and safety, but likewise prevent unnecessary and/or unfair standards or requirements from being implemented that would pose unreasonable impediments to businesses.

UUSA has another concern that could adversely impact long-term business certainty. Through various means (*e.g.*, NRC staff presentations), the idea that NRC should incorporate technical and/or economic feasibility into its waste standards or requirements has arisen. Such standards, typically known as feasibility-based standards, can be quite different from the more traditional cost-benefit-analysis (CBA) based standard setting approach (indeed, the cost-benefit approach is firmly grounded in the NRC's backfitting principles). UUSA understands that feasibility-based standards are in use by other federal agencies, but would offer that there is still much debate as to real impacts of such standards on businesses. In UUSA's opinion, feasibility-based standards provide a suboptimal approach compared to the CBA approach. Feasibility-based standards are more vague and subjective and effectively provide for continuing change in regulation (*e.g.*, advanced along with technological capability) without the strictures of the Administrative Procedures Act (*i.e.*, notice and comment). If the NRC continues to believe a feasibility-based approach is a sound approach, it should perform a thorough regulatory analysis to ensure no unfair and/or unnecessary business impediments. UUSA further recommends that should a feasibility-based approach be selected for adoption, it should at least include the concept of "reasonably achievable" versus simple achievability.

Question 3: What actions could be taken by the NRC and other Federal and State authorities, as well as by private industry and national scientific and technical organizations, to optimize management of LLRW? Which of the following actions are most likely to yield benefits?

- a. Changes in regulations;
- b. Changes in regulatory guidance;
- c. Changes in industry practices; and
- d. Other (name).

Currently, treatment and disposal of DUF6 is not commercially available in the US. UUSA will be accumulating significant amounts of DU over the next approximately 20 years and, in addition to the issues discussed above, there remains significant uncertainty regarding the ultimate treatment and disposition of this material. The NRC has been working on rulemaking plans for over six years to address this concern. This lingering uncertainty is leading to undeveloped waste disposal options and, thus, an unstable market for handling this waste stream. This lengthy process needs to be completed expeditiously to avoid further regulatory uncertainty which, in turn, is preventing companies like UUSA from being able to adequately plan for final treatment and disposal alternatives of its waste product.

UUSA is aware that the NRC Staff plans to publish a proposed rulemaking related to 10 C.F.R. Part 61 around February 2015, with the companion guidance scheduled for May 2015. UUSA strongly urges the NRC to maintain its schedule for publishing the rulemaking. We also strongly urge the NRC to analyze public comments as promptly as possible so that a final rule can be promulgated, thus establishing greater regulatory certainty for the future.

In addition, UUSA strongly recommends that the NRC Staff issue any proposed companion guidance to the rulemaking in a contemporaneous manner. Because guidance often contains much of the key implementation details and interpretations of the rulemaking, allowing a disjointed review time period of the proposed rule and its proposed implementing guidance is suboptimal, at best, and could very well lead to further delay if public comment on the related proposals is uncoordinated.