

**STATEMENT OF**  
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**U.S. NUCLEAR REGULATORY COMMISSION**

**BEFORE THE**  
**HOUSE ENERGY AND COMMERCE COMMITTEE**  
**ENVIRONMENT AND ECONOMY SUBCOMMITTEE**

**October 28, 2015**

Chairman Shimkus, Vice Chairman Harper, Ranking Member Tonko, and distinguished Members of the Subcommittee, I appreciate the opportunity to testify this morning on the U.S. Nuclear Regulatory Commission's (NRC) regulation of low-level radioactive waste (LLW). In my testimony, I will highlight: (1) NRC's regulatory role working in partnership with the States, (2) the current regulatory framework, and (3) two current regulatory improvement initiatives.

Since the Congress established the NRC in 1975, the agency has worked with our State partners to ensure protection of the public health and safety in the commercial generation, storage, transportation, and disposal of LLW. Commercial LLW is generated by thousands of industrial, academic, medical, and government licensees across the United States. Disposal of the LLW generated by these activities is permitted in only four operating facilities. These disposal facilities are operated by: *EnergySolutions* (Barnwell, South Carolina);

EnergySolutions (Clive, Utah); US Ecology (Richland, Washington); and Waste Control Specialists (WCS) (Andrews, Texas). The importance of safe management of commercial LLW has long been a matter of Congressional interest. In 1980, Congress enacted the Low-Level Radioactive Waste Policy Act and amended this Act with the Low-Level Radioactive Waste Policy Amendments Act of 1985.

### **Regulatory Role**

Under the Atomic Energy Act of 1954, as amended (AEA), the NRC regulates the safety and security of the generation, storage, transportation, and disposal of commercial LLW. Pursuant to Section 274b of the AEA, the NRC has relinquished its licensing and enforcement authority over most nuclear materials to 37 states that have entered into an agreement with the NRC (i.e., Agreement States). An Agreement State conducts regulatory programs that are adequate and compatible with NRC regulatory requirements. Under the AEA, the NRC oversees the Agreement State programs. The four commercial LLW disposal facilities and more than 85% of the licensees that generate LLW are regulated by the Agreement States.

### **Current Regulatory Framework**

The NRC and Agreement States have established a comprehensive regulatory framework that ensures the safety of LLW management. Among the regulations that the NRC has established, 10 CFR Part 61 contains the primary regulations governing the disposal of LLW.

The promulgation of Part 61 in 1982, was driven by some of the same factors that prompted the Congress to enact the Low-Level Radioactive Waste Policy Act in 1980, including the need to establish a stable regulatory regime to govern the safe disposal of LLW. Part 61 was one of NRC's earliest rules to adopt a risk-informed, performance-based, and systems approach to regulation. Part 61 and compatible Agreement State regulations and implementing guidance are used by the Agreement States to regulate disposal of LLW in their states. LLW is typically stored onsite by licensees until it is transferred for disposal. LLW is shipped in either containers that are self-certified by the shipper in accordance with U.S. Department of Transportation (DOT) regulations or, for higher activity shipments, in packages certified by the NRC in accordance with NRC regulations in 10 CFR Part 71 and transported in conformance with DOT regulations.

### **Regulatory Improvement Initiatives**

The NRC has identified opportunities to improve the regulations and the regulatory framework, and to address new waste streams and the disposal of greater-than-Class C wastes.

Several years ago, the Commission initiated development of a rulemaking proposal to clarify and improve Part 61 with respect to waste streams that were not contemplated during its initial development in the late 1970s, such as disposal of significant quantities of depleted uranium waste. On March 26 of this year, the Commission published for public comment a proposed rule and associated draft guide. Major provisions of the proposed rule include: (1) requiring technical analysis for protection of the general population to span a 1,000-year compliance period; (2) requiring additional technical analyses, including public protection over a

10,000 year performance period for certain long-lived waste and identification of design and site characteristics that provide defense-in-depth protection; and (3) requiring development of site-specific criteria for the future acceptance of LLW for disposal. The NRC solicited comments from the public via *Federal Register* notices on March 26 and August 27, 2015, and also conducted five public meetings, primarily in cities close to existing LLW disposal facilities. The comment period for this proposed rule closed on September 21, and the NRC staff is currently analyzing public comments. As we develop the draft final rule, we will continue to work closely with the Agreement States and expect to provide the draft rule for Commission consideration in 2016.

A second initiative is disposal of both Greater-Than-Class C (GTCC) waste and transuranic waste. Consistent with Part 61, GTCC waste is LLW with concentrations of radionuclides that exceed the limits established by the NRC for Class C waste and is, therefore, not generally suitable for near surface disposal. GTCC waste is generated by a variety of licensees, including nuclear power reactors, certain nuclear fuel cycle facilities, radioisotope manufacturers, and industrial users of radiation sources. In the Low-Level Radioactive Waste Policy Amendments Act of 1985, Congress assigned the responsibility for the disposal of GTCC waste to the Federal Government and required that GTCC waste be disposed of in a facility licensed by the NRC. Congress did not explicitly address the question whether that authority could be relinquished to an Agreement State. In 1989, the Commission amended the regulations in Part 61 to require GTCC waste to be disposed of in a geologic repository or in an alternative disposal facility approved by the Commission.

On January 30, 2015, the State of Texas sent a letter to the NRC inquiring whether the State of Texas, as an Agreement State, can regulate the disposal of GTCC and transuranic waste. In July 2015, the NRC staff provided the Commission with an analysis of the issues included in Texas's inquiry, along with options and a recommendation that NRC allow the State of Texas to license and regulate the disposal of GTCC waste at the WCS site. The staff also recommended that the NRC conduct a rulemaking to establish regulatory requirements covering GTCC or transuranic waste. On August 13, 2015, the Commission held a public meeting with the staff, the State of Texas, and stakeholders to discuss this issue. The Commission is currently considering the staff's analysis and recommendation.

### **Conclusion**

The NRC believes its regulatory program adequately protects public health and safety. To ensure this, we assess with our Agreement State partners the lessons learned from regulation of commercial LLW to identify appropriate improvements. I thank you for the opportunity to appear before you today and I would be pleased to respond to any questions.

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