



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

December 19, 2016

Dr. Dennis C. Bley, Chairman
Advisory Committee on Reactor Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

**SUBJECT: RESPONSE TO ADVISORY COMMITTEE ON REACTOR SAFEGUARDS
REGARDING REVIEW OF SECY-16-0106, PROPOSED FINAL RULE 10 CFR
PART 61, "LOW-LEVEL RADIOACTIVE WASTE DISPOSAL"**

Dear Dr. Bley:

I am responding to your letter dated November 14, 2016, that provided three conclusions and recommendations of the Advisory Committee on Reactor Safeguards on the U.S. Nuclear Regulatory Commission (NRC) staff's draft final rule that would revise the low-level radioactive waste disposal requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 61. The draft rule revisions are currently being reviewed by the Commission. In your letter, you identified the following conclusions and recommendations:

1. The approach in proposed final rule 10 CFR Part 61, "Low-Level Radioactive Waste Disposal" can ensure that facilities meet Commission public health and safety objectives.
2. We remain concerned about the requirement that existing operating disposal facilities need to satisfy the new performance objectives even if they do not plan to add substantial long-lived waste for disposal, especially for already-buried waste. The final rule should retain the provision that allows compliance for existing facilities on a case-by-case basis.
3. We prefer a regulatory approach consistent with that suggested in our previous reports making the site performance assessment with quantitative uncertainty analysis the basis for establishing the compliance and performance periods. The performance assessment results should inform qualitative requirements for periods exceeding the compliance period.

CONTACT: Gary Comfort, NMSS/MSTR
301-415-8106

Regarding Item 2, we understand that the “case-by-case” provision that you reference is the staff’s recommendation to delete the last sentence found in § 61.1(a), which reads:

Applicability of the requirements in this part to Commission licenses for waste disposal facilities in effect on the effective date of this rule will be determined on a case-by-case basis and implemented through terms and conditions of the license or by orders issued by the Commission.

This provision was included in the original 10 CFR Part 61 to recognize that disposal facilities operating at the time the rule was adopted in 1982 might encounter issues when adopting, wholesale, a brand new regulatory scheme. The provision was not intended to absolve operating disposal facilities from ultimately coming into compliance with 10 CFR Part 61. Because § 61.1(a) was only intended to apply to the original implementation of 10 CFR Part 61 and not future rule changes (including those in the draft final rule), the staff has recommended its removal to eliminate future confusion over the provision’s purpose. All currently operating disposal facilities have accepted waste that was not analyzed as a part of the original rulemaking for 10 CFR Part 61. Therefore, the staff recommends that these facilities satisfy the new performance objectives outlined in the final rule to ensure that licensees make informed decisions for continued site management and closure. In the rare situation that a regulator determines that there is an inappropriate burden for meeting the performance objectives defined in the regulations, a licensee can seek relief from the applicable regulatory authority (e.g., a license condition, an exemption under § 61.6, “Exemptions,” or the comparable Agreement State equivalent).

Regarding Item 3, the Committee recommends making the site performance assessment with quantitative uncertainty analysis the basis for establishing the compliance and performance periods rather than using the pre-determined periods defined in the rule (i.e., a compliance period of 1,000 years or 10,000 years depending upon the quantities of long-lived radionuclides that are planned to be disposed of at the site). The time periods in the draft final rule were determined to be appropriate after numerous interactions with stakeholders and review of related domestic and international requirements. The NRC staff concluded that the current approach provides a reasonable balance between the limitations of long-term evaluations, protection of future generations, and providing information for risk informing disposal of radioactive wastes. The Committee’s recommendation for developing site-specific time periods could unnecessarily complicate compliance decisions and result in undue burden and regulatory uncertainty for the licensee and regulator. In addition, although the NRC staff agrees that the evaluation of uncertainty, as previously recommended by the Committee, is an important tool in understanding a site performance assessment, the NRC staff considers that uncertainty itself should not be the principle determinant of the compliance and performance periods.

D. Bley

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The NRC staff appreciates the Committee's past and current review of the staff's rule and associated guidance.

Sincerely,

/RA/

Victor M. McCree
Executive Director
for Operations

cc: Chairman Burns
Commissioner Svinicki
Commissioner Baran
SECY

D. Bley

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The NRC staff appreciates the Committee's past and current review of the staff's rule and associated guidance.

Sincerely,

/RA/

Victor M. McCree
Executive Director
for Operations

cc: Chairman Burns
Commissioner Svinicki
Commissioner Baran
SECY

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