



UNITED STATES
NUCLEAR REGULATORY COMMISSION
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May 30, 2017

MEMORANDUM TO: Kimyata Morgan-Butler, Chief
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Office of Nuclear Material Safety
and Safeguards

FROM: Gary C. Comfort, Jr. */RA/*
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SUBJECT: SUMMARY OF CLOSED MEETING HELD ON APRIL 4, 2017, WITH
THE DEPARTMENT OF ENERGY REGARDING THE 10 CFR PART
61, "LOW-LEVEL RADIOACTIVE WASTE DISPOSAL," FINAL
RULEMAKING (RIN 3150-AI92, DOCKET NRC-2011-0012)

On April 4, 2017, the Nuclear Regulatory Commission (NRC) staff met with managers from the Department of Energy (DOE) to discuss DOE's concerns with certain provisions of the draft final 10 CFR Part 61 rulemaking on low-level radioactive waste disposal. Overall, DOE is concerned that the draft final rule imposes unnecessary complexity and burden.

The DOE staff provided a handout (see enclosure 1) and discussed their concerns related to the following issues in the draft final rule: (1) lack of grandfathering for already operating facilities; (2) their opinion, that the compliance period should not exceed 1,000 years (although DOE considers peaks that may occur beyond 1,000 years as part of risk-informed decision-making); (3) the 10,000 year site stability requirement was not risk-informed; and (4) radon should be evaluated against a flux or concentration standard rather than as part of the dose evaluation. DOE is concerned that the draft final rule and guidance will result in unnecessary burden and costs for existing DOE facilities and responsibilities. The DOE staff provided some specific examples of situations where they believe the draft final rule and guidance have imposed unnecessary complexity and burdens.

The NRC staff identified areas in the rule's regulatory guidance which clarify the requirements and address some of DOE's concerns about applicability to its sites and potential costs. For example, the NRC staff clarified that, since the rule only applies to currently operating and future disposal sites, DOE would not be impacted by the new requirements at previously closed disposal sites for which DOE is responsible, unless specific regulations, legislation, or policy statements require such adherence. DOE was concerned with the potential impact the rule might have on sites such as the West Valley Demonstration Project (WVDP) and its NRC-licensed disposal site. The NRC staff explained that the revised 10 CFR Part 61 would not apply to the NRC-licensed disposal area. After the meeting, the NRC staff clarified with

DOE that the WVDP policy statement does indicate that incidental waste should meet the performance objectives of 10 CFR Part 61 and thus some of the new requirements, including 10,000 year stability requirements, could apply to incidental waste decisions at the WVDP if changes are made to 10 CFR Part 61. As a practical matter, the impact of the changes in the draft final rule to any decisions regarding incidental waste would not be significant, since the staff's evaluation of incidental waste determinations have historically relied on several features found in the proposed final rule, such as a 10,000 year compliance period and a site-specific intruder assessment. The DOE staff believe the 10,000 year compliance period has cost impacts, e.g., due to extensive analysis with no apparent increase in safety. Saltstone at Savannah River Site was discussed as an example of this.

With regard to the DOE's concerns related to site stability, the draft final guidance in NUREG-2175, "Guidance for Conducting Technical Analyses for 10 CFR Part 61" (Agencywide Documents Access and Management System (ADAMS) Package Accession No. ML16218A504), already indicates that the expectation for stability is that the analysis is only necessary to the extent that stability is relied upon to meet the performance requirements. This is consistent with the DOE staff's request. The NRC staff discussed that they had contacted the impacted Agreement States to better estimate costs of impacts and that the final rule was revised to minimize burden while still achieving the NRC's objectives for the rulemaking. In addition, the NRC staff took into consideration the DOE's submitted comments on the proposed rule, many of which resulted in changes to the final rule; however, the staff also considered comments by other stakeholders. The DOE staff also asked about the NRC's recommendation to the State of Texas discussing how probability might be used in the context of intruder assessments, which did not appear to be consistent with the draft guidance that states that "an inadvertent intruder assessment does not consider the probability of inadvertent intrusion occurring." The NRC staff stated that NRC guidance indicates that probability should not be considered in these assessments; however guidance represents one, but not necessarily the only, acceptable approach to meet regulatory requirements.

During the course of the meeting, DOE staff reiterated their continued concerns about the language of the draft final rule and guidance and provided an illustrative example of real impacts of provisions in the draft final rule. In addition, DOE staff submitted a handout and requested that it be provided to Chairman Svinicki and the other members of the Commission. The NRC staff acknowledged that these were some of the most challenging issues associated with the rulemaking. The NRC staff thanked DOE for their comments and reiterated that the NRC staff carefully considered DOE's comments in developing the draft final rule language

In summary, some new examples of impacts were discussed, but no issues not previously considered as part of the rulemaking docket were discussed during the meeting. The NRC staff believe they have addressed all of the issues discussed at the meeting in the Public Comment Analysis Section of the draft *Federal Register* Notice for the final rule (see Enclosure 1 of SECY-16-0106 [ADAMS Package Accession No. ML16188A290]). The specific sections of the package that address DOE's concerns are item B.9 (grandfathering), Item J (compliance period), item K (site stability), item E.4 (radon).

An attendance list is provided in the enclosures.

Enclosures:

1. DOE Handout
2. Meeting Attendees

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