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Ms. May Ma
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Industry Comments on Draft "Guidance for the Reviews of Proposed Disposal Procedures and Transfers of Radioactive Material Under 10 CFR Part 20.2002 and 10 CFR 40.13(a) (Docket NRC-2017-0198)

Project Number: 689

Dear Ms. Ma:

On behalf of the Nuclear Energy Institute's (NEI)¹ Low Level Waste (LLW) Task Force members, we appreciate the public meetings held on October 19th and November 16th and the opportunity to comment on the subject draft guidance. We offer the following comment for the U.S. Nuclear Regulatory Commission (NRC) staff's consideration.

Based on our interpretation of the draft guidance and discussions during the November webinar, we suggest the draft guide be revised to more clearly articulate when, if ever, an approval under 10 CFR 20.2002 is needed in cases involving licensed radioactive material on or within a licensee's site. Specifically, the document appears internally inconsistent and warrants clarification as to NRC's intent.

Specifically, page 7 of the draft guidance states:

in practice, 20.2002...is most often used for burial of waste in hazardous or solid waste landfills that are permitted under Resource Conservation and Recovery Act (RCRA), but it may be used for a method of alternative disposal not already defined in the regulations **such as burial on a licensee's site...**

However, page 27 of the draft guidance states:

¹ NEI is responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory, financial, technical and legislative issues. NEI members include all companies licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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For onsite disposal, no exemption is needed, because the radioactive material is already licensed and remains under license. When the license is terminated, the dose associated with residual radioactivity remaining at the site, including the onsite disposals, will be evaluated to ensure the LTR criteria are met for release of the site.

Industry believes that page 7 of the draft guidance is not correct, does not reflect current practice as allowed by NRC, and should be edited to delete the phrase, "such as burial on a licensee's site." Specifically, in 2009, the definition of Residual Radioactivity was added to 10 CFR 20.1003 (62 FR 39087, July 21, 1997):

Residual radioactivity means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

Further, as page 27 of the draft guidance states, no exemption is needed for onsite burial since the radioactive material is already licensed and remains on site. Therefore, if the material can be determined to be residual radioactive material as defined in 10 CFR 20.1003 and reasonably expected to meet the criteria for release at the time of license termination, then its burial would not necessitate a 10 CFR 20.2002 application and exemption. A licensee would maintain records documenting that the residual activity concentrations are expected to be, at the time of license termination, a small fraction of the screening criteria in NUREG 1757 Volume 2, Rev. 1, Appendix H and, therefore, additional regulatory approval for its management in the interim is not needed. The licensee would leave the material in place with complete documentation, e.g., 10 CFR 50.75(g), 10 CFR 70.25(g), 10 CFR 72.30(f). Not only is this interpretation a reasonable one and adequately protective of public health and safety, it is consistent with industry practice to date and allowed by NRC. Therefore, as stated above, page 7 of the draft guidance should be edited to delete the phrase, "such as burial on a licensee's site" such that licensees are not guided to submit a 10 CFR 20.2002 application for onsite burials.

We trust you find this comment helpful and we look forward to learning how NRC resolves it. If you have any questions about the content of this letter, please contact me.

Sincerely,


Janet R. Schlueter

Cc: Gregory F. Suber, NMSS/DUWP
Robert L. Gladney, NMSS/DUWP/LLWB
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