



UNITED STATES
NUCLEAR REGULATORY COMMISSION
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October 2, 2019

MEMORANDUM TO: Stephen Koenick, Chief
Low-Level Waste and Projects Branch
Division of Decommissioning, Uranium Recovery
and Waste Programs
Office of Nuclear Material Safety and Safeguards

FROM: Stephen Dembek, Senior Project Manager
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Division of Decommissioning, Uranium Recovery
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Office of Nuclear Material Safety and Safeguards

SUBJECT: SUMMARY OF SEPTEMBER 6, 2019, PUBLIC MEETING

On September 6, 2019, a Category 2 public meeting was held at U.S. Nuclear Regulatory Commission (NRC) headquarters. The meeting was noticed on NRC's public website and the notice is available at NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML19247B399. The meeting agenda and presentation slides were included as part of the meeting notice. The purpose of the meeting was to discuss the NRC's proposed path forward to address concerns regarding Regulatory Issue Summary (RIS) 2016-11, "Requests to Dispose of Very Low-Level Radioactive Waste Pursuant to 10 CFR 20.2002" (ML16007A488), with the Nuclear Energy Institute (NEI); EnergySolutions, LLC; Waste Control Specialists LLC; South Texas Project Nuclear Operating Company; and several Agreement States.

SUMMARY OF NRC PRESENTATION:

Bo Pham, Deputy Director, Division of Decommissioning, Uranium Recovery and Waste Programs, opened the meeting for the NRC staff. Mr. Pham presented a short overview of the recent history of this issue using the presentation slides. Specifically, he discussed the Agreement State (AS) Letter, FSME-12-025 (ML12065A038), RIS 2016-11, and South Texas Project (STP) Enforcement Action, EA 18-137 (ML18260A250). He then summarized the three stakeholder letters the NRC received on this issue. The letters were received from: NEI (ML19086A320), EnergySolutions, LLC (ML19121A550), and Waste Control Specialists LLC (ML19206A452). Mr. Pham affirmed the position in RIS 2016-11 in that Title 10 of the *Code of Federal Regulations* (10 CFR) Section 20.2002, "Method for obtaining approval of proposed disposal procedures," has two approval aspects, one by the licensing authority of the generator and one by the licensing authority for the disposal. He further noted that the NRC continues to develop its path forward (whether / how to clarify guidance) but has not reached a decision of the specific means to do so.

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After the overview, Stephen Koenick, Chief, Low-Level Waste and Projects Branch, presented the NRC's proposed path forward on this issue. He discussed the two-step process for 10 CFR 20.2002, that consists of the NRC staff performing the first step to review and approve the alternate method of disposal. The Agreement State, if applicable, performs the second step to approve the actual disposal and issue an exemption to the receiving facility, if appropriate. Mr. Koenick, discussed the possible next steps as considering a possible update to RIS 2016-11 or other NRC guidance. The staff would solicit stakeholder input before NRC guidance is revised. He stated that the staff is also considering a potential change in the interpretation of 10 CFR 20.2001 disposal transfers. Specifically, the staff is considering interpretation of "authorized recipient" to include non-licensed disposal facilities that have been granted an exemption to possess licensed material. The NRC is considering appropriate means to communicate this potential new interpretation to allow for additional stakeholder engagement such as including it within the scope of the ongoing very low-level waste scoping study.

DISCUSSION:

The discussion session was opened after the NRC's presentation.

A representative from EnergySolutions, wanted to know the schedule for the next steps and what will happen during the interim period before the path forward is implemented. The representative wanted to know how this will be communicated to 10 CFR Part 50 licensees and whether or not they need to report anything to the NRC. The representative also requested that very low-level waste be defined and questioned whether disposal via license to license transfer under 10 CFR 20.2001 would be considered in the new path forward.

A representative from Waste Control Specialists noted there was concurrently confusion in the market on the acceptability of waste transfer verses waste disposal and requested that this confusion be resolved with clarifications.

A representative from the NEI noted that it appears NEI is being ignored because the NRC's path forward does not address the issues NEI raised in their letter. Specifically, that the NRC was not following the law and its own regulations when the waste disposal policy was changed by issuing RIS 2016-11. The NRC should clearly look at backfit issues related to the RIS 2016-11 issuance. He further noted NEI wants NRC to establish a transformative, stable, and transparent regulatory policy and case-by-case enforcement discretion is not a predictable way to regulate the industry, and that use of an Enforcement Guidance Memorandum (EGM) may be more appropriate. He noted there are lots of questions on the practicality of using enforcement discretion. He questioned the duplication of reviews by the NRC and Agreement States and should the NRC do a review if the NRC has given Agreement State the ability to regulate disposal. He reiterated the request to rescind RIS 2016-11 and reinstate the policy described in Information Notice 86-90. NEI is looking for a clearly communicated process moving forward.

A representative from the State of Texas noted that Texas does not have a 10 CFR 20.2002 process and instead uses existing Texas regulations for issuing exemptions. He indicated that the State of Texas would like to stay involved in this matter and wants any confusion to be resolved.

A representative from the State of Utah saw value in using enforcement discretion and agreed with others that clarification is needed to gain stability in the enforcement process. He also asked how State exemptions would be looked at by the NRC.

A representative from South Texas Project stated the licensee is looking for regulatory certainty. She supports updating RIS 2016-11 and 10 CFR 20.2001 alternative process.

Others mentioned the importance of knowing the NRC's timeframe for completing the resolution of this issue. Mr. Pham stated that the NRC expects to issue the response letters by the end of September.

The members of the public in attendance and on the phone were then invited to comment. Some of the public comments are listed below:

- The public wants to know where this low-level waste is going. The records of alternate disposals should be publicly available. The concern is that an unlimited amount of material can end up in the market place instead of disposal by burial. Information on the curie content and cost of the waste should be publicly available.
- There have been numerous incidents where the government made safety promises that were not kept.
- This issue goes beyond Parts 50 and 52. This is an evolving issue, and we need regulatory certainty. The two-step process discussed in the slides is not clearly articulated to licensees.
- Another commenter suggested a revision to a power plant's Process Control Program (PCP) to evaluate proper disposition of solid waste. All Part 50 licensees have PCPs that describe acceptable methods of processing and disposal of solid waste and effluents. The Agreement States have a process to evaluate disposal requests. The commenter raised a question as to whether a Part 50 licensee could go to the PCP and outline the process and evaluate the waste and determine its suitability for a RCRA disposal.

After all public comments were received and an offer for any additional comments from participants, Mr. Pham closed the meeting.

Enclosure: Attendance List

SUBJECT: SUMMARY OF SEPTEMBER 6, 2019, PUBLIC MEETING
DATE: October 2, 2019

DISTRIBUTION: B.Pham S.Dembek S. Koenick

ADAMS Accession No.: ML19262G458

*** via email**

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