



November 14, 2019

Secretary, U.S. Nuclear Regulatory Commission:

The Nuclear Regulatory Commission (NRC) published in the July 22, 2019 Federal Register [RIN 3150-AK00, Docket ID NRC-2017-0081] a request for comments on the "Greater Than Class C and Transuranic Waste" (GTCC) draft regulatory basis. The NRC is seeking advice and recommendations from the public on the draft regulatory basis pre-rulemaking document. Comments on this publication were originally due on September 20, 2019; the comment deadline was extended to November 19, 2019.

The Texas Department of State Health Services (DSHS), a NRC agreement state, is providing the following comments on the specific questions listed in section III "Specific Request for Comment" of the Federal Register notice.

The NRC requested input on whether any characteristics of GTCC waste are not identified in the draft regulatory basis that should be considered by the NRC when evaluating the near surface disposal of GTCC. In response to this question, the DSHS Radiation Program staff notes that Americium-241 sealed sources in gauging devices and well logging sources appear to have been included under the description of "neutron irradiator" sources in Tables 3-4¹ and A-1² of the draft regulatory basis. Under this interpretation, Americium-241 would not be permitted for the near surface disposal. The unsealed form of Americium-241 does not appear to be included in the table A-1 "Description of the Waste Streams in NRC's Hazards Evaluation". DSHS believes it would be helpful for the draft regulatory basis to explicitly address disposal of Americium-241.

¹ Table 3-4 "Suitability of GTCC Waste Stream for Near-Surface Disposal and Agreement State Regulatory Oversight" on page 25.

² Table A-1 "Description of the Waste Streams in NRC's Hazards Evaluation" on page A-2.

The NRC also sought recommendations as to whether it should consider other potential changes or additions to the existing technical requirements for low-level radioactive waste disposal in evaluating GTCC waste disposal. In response, DSHS recommends no changes to the existing technical requirements.

NRC solicited suggestions from agreement states to enhance public or occupational safety regarding the disposal of GTCC waste. These suggestions could include rulemaking initiatives, guidance documents, or other actions that could be taken by the NRC.

NRC may want to initiate a conversation with DOE to explore their plans for developing a geological repository for final waste disposal.

The NRC requested additional comments about establishing a relatively uniform set of requirements for GTCC waste disposal in Agreement States and in non-Agreement States. DSHS believes the NRC draft regulatory basis covers this topic sufficiently and has no additional comments.

The NRC specifically solicited suggestions for changes to the existing regulations that are not addressed in the draft regulatory basis that could facilitate GTCC waste disposal and better align the requirements with current health and safety standards. DSHS has concluded that it would be helpful if the regulations clearly identified and named the gap between Class C waste and High-Level Waste by the development of one or more additional radioactive waste classes. The regulations could also set forth distinct disposal criteria associated with each additional radioactive waste class.

The NRC sought recommendations from stakeholders to improve the cost effectiveness of requirements for GTCC waste disposal, while adhering to the requirements of 10 CFR Part 61. NRC may want to initiate a conversation with DOE to explore their plans for developing a geological repository for final waste disposal.

NRC asked for feedback regarding its evaluation of "Cost/Impact Considerations" in Section 7 of the draft regulatory basis, particularly issues that are pertinent to the NRC or any stakeholders including the public, industry, Agreement States, Indian Tribes, the U.S. Department of Energy, or other government agencies. DSHS notes that the NRC's "no action" cost considerations did not appear to consider the cost to licensees of being unable to dispose of GTCC waste. Without a disposal facility that can accept

the GTCC waste, licensees must incur costs on an ongoing basis for storing and securing the GTCC.

NRC asked stakeholders to raise any other issues, not identified in its other questions, that the NRC should have considered in the draft regulatory basis. DSHS puts forth the following issues for NRC consideration:

- NRC and Agreement State licensees have GTCC radioactive waste on hand that must be maintained in various facilities. Licensees, as with any business, sometimes go out of business and go bankrupt. Guidance is requested to ensure that the ongoing care and custody of the GTCC radioactive waste does not become a health and safety, and security issue when the licensee is unable to fulfil its responsibilities regarding such waste.
- Guidance is requested regarding how an Agreement State should calculate the financial assurance requirements for its licensees, to ensure the safe custody of the GTCC waste, and pay for eventual disposal.
- Some GTCC waste consisting of sealed sources may be exempt from the current requirements for financial assurance. DSHS suggests the NRC consider amending the financial assurance regulations to include sealed sources that could become GTCC waste on a per source basis.

Sincerely,

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