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Submitter Information

Name: Janet Schlueter
Submitter's Representative: Allison Borst
Organization: NEI

General Comment

See attached file(s)

Attachments

11-19-19_NRC_Industry Comments on Draft Reg Basis GTCC

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November 19, 2019

Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

ATTN: Rulemaking and Adjudications Staff

Subject: Industry Comments on Draft Regulatory Basis for Greater-Than-Class-C and Transuranic Waste; 84FR35037; Docket NRC-2017-0081

Project Number: 689

Dear Ms. Vietti-Cook:

The Nuclear Energy Institute (NEI)¹, on behalf of its members, submits the following comments in response to a July 22, 2019 Federal Register notice. Specifically, the notice solicits comments on the U.S. Nuclear Regulatory Commission's (NRC) Draft Regulatory Basis to support the development of a 10 CFR Part 61 rulemaking for the potential disposal of Greater-Than-Class-C (GTCC) radioactive waste in land disposal facilities and related matters involving the definition of Transuranic Waste (TRU). We appreciate the NRC public meetings held on August 22 and 27, 2019 which helped inform our comments, and extension of the public comment period until November 19.

For background purposes, the staff correctly states that GTCC waste is generated by nuclear power reactors, fuel cycle facilities, and other facilities and licensees outside of the fuel cycle, and it includes plutonium-contaminated nuclear fuel cycle wastes, activated metals, sealed sources, and radioisotope manufacturing wastes. We also recognize that GTCC waste may include TRU waste which is a byproduct of nuclear research and power production, spent fuel recycling or medical isotope production and contains transuranic radionuclides such as isotopes of plutonium.

As NRC is aware, the safe disposal of GTCC waste was addressed in both the Low Level Radioactive Waste Policy Amendments Act of 1985 and the Energy Policy Act of 2005. Specifically, it is the U.S. Federal government's role to develop recommendations and options for the safe disposal of all GTCC waste. To that end, both NRC and the Department of Energy (DOE) have taken important steps to fulfill their respective roles, e.g., DOE's final GTCC Environmental Impact Statement (EIS) issued in 2016. Further, in response to a 2015 inquiry from the State of Texas to NRC on their authority as an Agreement State to regulate GTCC disposal within their State, NRC staff evaluated the technical, regulatory and jurisdictional policy issues which led to issuance of the subject Draft Regulatory Basis available for comment. It is safe to say that the broader nuclear industry and radiation protection community applaud NRC's efforts to address these important GTCC and TRU waste disposal issues as it is a

¹ The Nuclear Energy Institute (NEI) is responsible for establishing unified policy on behalf of its members relating to matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect and engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations involved in the nuclear energy industry.

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fundamental next step to establish a more holistic, national framework for the safe disposal of all categories of radioactive waste regardless of their origin.

As stated on page 49 of the Draft Regulatory Basis, "the NRC staff has analyzed various GTCC waste streams in DOE's Final EIS to determine whether, for each waste stream, disposal in a near-surface disposal facility is appropriate, and if so, whether a facility that can accept that waste stream must be regulated by the NRC or if it can be regulated by an Agreement State." Based on a review of the Draft Regulatory Basis, we generally support NRC staff's conclusion that most GTCC waste streams analyzed are potentially suitable for near-surface disposal and almost all GTCC waste could be safely regulated by an Agreement State. We also fully recognize, as clearly stated in the Draft Regulatory Basis and by NRC staff during the public meetings, that identification and evaluation of regulatory or technical concerns associated with land disposal of GTCC waste will largely depend on the characteristics of the GTCC waste, the radioactive waste disposal site characteristics and performance, as well as the relevant Agreement State's radiation protection regulatory and oversight program. Our point in restating these facts is to emphasize that finalization of the Regulatory Basis and potential Part 61 rulemaking does not, in and of itself, provide any sort of "carte blanche" regulatory approval for land disposal of GTCC waste. Rather, risk-informed decisions will be made on a case-by-case basis and include resolution of important technical issues such as an inadvertent intruder assessment to demonstrate compliance with the Part 61 performance objectives. We fully support the staff's proposed site-specific approach to evaluating GTCC waste disposal. In that regard, it is imperative that the staff use the most up to date dose methodology and assessment tools to estimate potential dose impacts that are more realistic than those relied upon in the current Part 61, i.e., the International Commission on Radiation Protection Report 2 issued in 1960 for organ and whole-body dose estimates.

With regard to the definition of TRU, the current Part 61 definitions section is based on the 1980 Low Level Radioactive Waste Policy Act which excluded TRU from the definition of low-level waste. The 1980 Act was superseded by the 1985 Amendment which included a TRU definition. Therefore, NRC now has a statutory basis on which to modify Part 61 definitions to include TRU. We support this modification for clarity, consistency and transparency purposes.

We also support the other regulatory amendments proposed by the staff for consistency and completeness, i.e., removing restricting provisions from Section 61.55; removing the TRU exclusion in Section 61.2; and amending the Section 61.57 labeling requirements to include GTCC.

Finally, we considered the eight FRN questions aimed at determining whether the scope of the Draft Regulatory Basis and potential conforming modifications to Part 61 needs to be expanded based on information not yet considered by the staff. We support a rulemaking on this matter and have not, to date, identified any information or data that would modify the staff's current approach. Therefore, we elected not to answer the specific questions.

We look forward to reviewing the final Regulatory Basis and the staff proceeding to the next rulemaking phase. Please contact me with any questions or comments on the contents of this letter.

Sincerely,



Janet R. Schlueter

c: Ms. Patricia Holahan, NRC/NMSS/DUWP
Mr. John Tappert, NRC/NMSS/DREF
Mr. Gary Comfort, NRC/NMSS/DREF