

From: Michel Lee Council <lee2councilenergy@gmail.com>
Sent: Thursday, October 22, 2020 12:01 AM
To: VLLWTransferComments Resource
Subject: [External_Sender] Comments of CIECP and LEAF Opposing Transfer VLLW to Exempt Persons for Disposal (Oct 21, 2020). (Docket ID NRC-2020-0065).

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October 21, 2020

Comments of Council on Intelligent Energy & Conservation Policy (CIECP) and LEAF of Hudson Valley (Legal Environmental Advocacy Fund of Hudson Valley) to U.S. Nuclear Regulatory Commission (NRC) regarding proposed interpretive rulemaking “Transfer of VLLW Nuclear Waste to Exempt Persons for Disposal” Docket No. NRC-2020-0065

TO: U.S. Nuclear Regulatory Commission
Annette Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Via email to Comment Submission Email Box: VLLWTransferComments.Resource@nrc.gov

Dear Nuclear Regulatory Commission:

The Council on Intelligent Energy & Conservation Policy (CIECP) and LEAF of Hudson Valley (Legal Environmental Advocacy Fund of Hudson Valley) (LEAF) oppose the proposed rulemaking titled “Transfer of VLLW Waste to Exempt Persons for Disposal” and strongly urge the Nuclear Regulatory Commission (NRC) to:

- (1) Rescind and cancel this proposed “interpretive” rulemaking. It is not a reinterpretation of any existing rule. Rather, its adoption would be a *de facto* sweeping rollback of law and regulations.
- (2) Abandon the NRC’s arbitrary and capricious course of circumvention of its own regulatory process via mechanisms such as reinterpretations of long-established rules.
- (3) Fulfill your obligation to provide candid and transparent information to the public in a means which honestly and fully identifies risks and costs being imposed upon the public, including and especially those which will likely be passed down to future generations.
- (4) Take a hard look – with due deference to your charged mission to protect public safety and the environment – at whether the NRC’s current approach to radioactive waste, in and beyond the transactions contemplated in this proposal, are in the public interest.

Introduction

Proceeding with the “interpretive” rulemaking “Transfer of VLLW Waste to Exempt Persons for Disposal” would be an extraordinarily reckless abrogation of the NRC’s statutory authority and a violation of the agency’s prime mission. (U.S. NRC Overview)

CIECP and LEAF are signatories to Comments previously submitted in this matter (92 Organizations’ Comments).^[1] So as not to strain the current limited time resources of NRC staff, we will here not focus here on the points and concerns raised by watchdog, environmental, environmental justice, public health, religious, and other civil society groups in the 92 Organizations’ Comments.

It bears mention, however, that all of these comments, as well as those of numerous other resource-strained individuals and nonprofits, are being filed during the Covid-19 crisis. The record clearly reflects that numerous persons and organizations have implored the NRC to extend the comment period until the pandemic abates and public meetings can be safely held.

^[1] CIECP and LEAF continue to support and hereby incorporate by reference the arguments and evidence presented in those Comments.

The pandemic has also placed an extraordinary and unprecedented load upon elected and other federal, state and local officials, making it utterly unfeasible for them to give this proposal the attention it deserves, much less draft responsive comments. Effectively, the NRC is depriving virtually all elected governmental bodies of meaningful participation in this process.^[2]

We earnestly hope that this careless scheme and undemocratic decision-making process have been proffered only because NRC staff are likewise beset by difficult working conditions during the pandemic – enabling this rulemaking to somehow “slip through the cracks” of normal preliminary review.

Otherwise, it would seem, the agency has truly lost all grip on its moral compass

There is absolutely no imperative – beyond the narrow financial interest of the nuclear industry – to willy-nilly dump radioactive materials into regular landfills and municipal dumps throughout the United States. Tellingly, the NRC has not even bothered to expound on the public interest rationale.

The “interpretive” rulemaking “Transfer of VLLW Waste to Exempt Persons for Disposal” is utterly inimical to the public interest. We briefly enumerate just three of the reasons why below.

POINT ONE: “Transfer of VLLW Waste to Exempt Persons for Disposal” is So Vague and Internally Contradictive as to be Nonsensical. Nonsensical Federal Rules are Inimical to the Public Interest.

As the NRC acknowledges, there exists no formal regulatory definition of “VLLW”. Nowhere does the NRC enumerate either a list of all the potential materials which the NRC deems would fall into the VLLW category or identify materials which the NRC deems excluded from the category. Ergo, “VLLW” is either meaningless or must be assumed to be amenable to encompass highly radioactive and toxic reactor internals and site debris, including structures containing plutonium and toxic metals, as well as radioactive and toxic microparticulates which can be ingested and readily absorbed into body tissue, passed through the placenta into babies developing in utero, expressed in breast milk and/or inhaled deeply into people’s lungs. It is well established that there is no such thing as a “safe” level of radiation exposure, all radiation exposure carries risk, including natural radiation. The effects of exposure are cumulative. (See, e.g., Carpenter; Landrigan; Little; Makhijani; Mothersill; NAS BEIR VII; Olson; Schettler; Szumiel.) **From a population perspective, vulnerability to radiation is elevated for babies in utero, infants, children, adolescents, and women.** Humans in utero, during early post natal life, and up to the end of adolescence are especially vulnerable to environmental insults which may have long-term immune, neurological, and developmental consequences. (IBCERCC; Mothersill; Sly).

Also as NRC acknowledges, current regulations only allow transfer of radioactive waste to licensed persons. The VLLW interpretive rule entertains a wholesale exemption scheme whereby the exemptions swallow the rule. There is nothing within the proposed VLLW which prescribes parameters. As a result, there is no yardstick by which to measure either compliance or noncompliance. The entire VLLW is thus meaningless.^[3]

The sloppiness of the scheme is reflected in conflicts of logic set forth in NRC slides. Under the heading “What we are proposing,” a block on slide 4 notes the NRC would be allowing “permanent disposal”.

The block beneath then professes the scheme would “not result in the development of legacy sites.”

Incongruently, too, the NRC contends that some other state or regional oversight body will conduct oversight after the commission abdicates its duty of oversight over disposed VLLW, yet the NRC purports

^[2] Current reality additionally argues for extension of the public comment period and delay of NRC decision-making because commercial enterprises and labor groups are substantially focused on dealing with the overwhelming challenges of the pandemic.

^[3] While the NRC has proposed a 25 millirem (mrem) a year cumulative dose limit, there is identified metric by which that limit is to be derived, no means for validation of the model(s) used by entities seeking exemptions, no monitoring requirement, and no enforcement mechanism. In other words, 25 mrem/yr, within the context of this proposal, is a meaningless unmeasured quantification.

to “**NOT** {be} requiring additional regulatory agencies to take responsibility for the oversight of disposed VLLW.”^[4]

Perhaps the most glaring absurdity is evidenced in the amorphous designation: “Exempt Persons”. Evidently any individual or entity, of whatever level of capitalization, understanding of radioactivity, experience with hazardous waste, or history of behavior can become a nuclear waste dump operator now so long as the NRC has issued an exemption. One would be tempted to satire these “Exempt Persons” as any Tom, Dick and Harry, but for the fact that highly radioactive dangerous materials may truly end up in dump sites operated by any Tom, Dick and Harry. This is absurd, but not amusing.

POINT TWO: “Transfer of VLLW Waste to Exempt Persons for Disposal” Would Pave the Way for Even More Widespread Dumping of Radioactive Waste and Hazards on Minority, Low Income and Marginalized Communities. The Rule Would Promote Environmental Injustice on a Scale Tantamount to Civil Rights Violation. This is Inimical to Public Interest.

Enacting the VLLW would perpetuate environmental injustice on a massive scale.

Landfills are linked to major forms of environmental harms, including water contamination, greenhouse gas production, and accumulation of toxins in human and natural systems. Hazardous waste landfills are regularly co-located in rural communities, particularly in poor communities of color.

Hazardous waste landfills have been shown to be a form of environmental inequality potentiating adverse health outcomes disproportionately experienced by poor communities and communities of color. Recently Cannon, of University of California Davis Cannon sought to investigate the siting of landfills which are not regulated as hazardous waste. These so-called “non-hazardous” landfills comprise 93% of landfills in the US, and include construction and demolition (C&D), industrial, and municipal landfills. The author endeavored to understand if and to what degree previously analyzed relationships among socio-demographics, ruralness, disasters, segregation, and hazardous waste landfill presence were the same when investigating non-hazardous waste landfills. The findings provide some of the first evidence that sociodemographic relationships, such as race, class, and gender axes, to hazardous waste landfills are similar to those of non-hazardous waste landfills. The evidence supports both racial discrimination and socioeconomic inequality theories, which argue that poor people and people of color disproportionately experience environmental inequality on account of race and economic status. The study extends research on hazardous waste landfills to non-hazardous waste landfills. While not assessing siting decisions, the research demonstrates that low-income and minority populations are disproportionately affected by landfill presence. Landfill presence, even more than undesirable land use, poses multiple threats to human health and ecological systems.

POINT THREE: “Transfer of VLLW Waste to Exempt Persons for Disposal” Ignores All the Risks To Landfills and Municipal Waste Dumps Which Will Be Exacerbated by Climate Change

Extreme weather, floods, erosion, landslides, wildfires and wild temperature extremes are the known risk of our changing climate. All of these phenomena present unanalyzed risks to landfills and, by extension, heightened risk to the communities around them. This compounds the environmental justice of the VLLW.

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^[4] Technically, of course, the NRC is correct. It has no authority to require any other agency to assume responsibility over radioactive materials. This only serves to underscore the possibility that at some point, even in the near future, *no* regulatory entity will be engaged in oversight.

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Dear NRC,

The Council on Intelligent Energy & Conservation Policy (CIECP) and LEAF of Hudson Valley (Legal Environmental Advocacy Fund of Hudson Valley) (LEAF) respectfully submit our comments on the proposed NRC rulemaking: Transfer VLLW to Exempt Persons for Disposal (Oct 21, 2020). (Docket ID NRC-2020-0065).

Sincerely,

Michel Lee, Esq.

Michel Lee, Esq.

Federal Register Notice: 85FR13076
Comment Number: 13679

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Subject: [External_Sender] Comments of CIECP and LEAF Opposing Transfer VLLW to Exempt Persons for Disposal (Oct 21, 2020). (Docket ID NRC-2020-0065).

Sent Date: 10/22/2020 12:01:05 AM

Received Date: 10/22/2020 12:01:17 AM

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