

POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Hanson
SUBJECT: SECY-20-0098: Path Forward and Recommendations
for Certain Low-Level Radioactive Waste Disposal
Rulemakings

Approved Disapproved Abstain Not Participating

COMMENTS: Below Attached None

Entered in STARS

Yes
No

Signature
Christopher T. Hanson

Date 03/18/2022

Chairman Hanson's Comments on SECY-20-0098, "Path Forward and Recommendations for Certain Low-Level Radioactive Waste Disposal Rulemakings"

I commend the staff's efforts on proposing a path forward for regulating the disposal of certain Low-Level Radioactive Waste (LLRW), including Greater than class C (GTCC), and transuranic (TRU) waste. The NRC promulgated its original LLWR regulations in 10 CFR Part 61 nearly 40 years ago based on the best available information at that time.

The LLRW disposal needs have changed significantly since then. The LLRW streams generated today differ significantly in quantity and concentration from those initially considered when the 10 CFR Part 61 regulations were promulgated. For one, under the existing regulations, it is simply assumed that GTCC will be disposed of in a deep geologic repository for adequate protection of human health and the environment. However, recent NRC staff evaluations have demonstrated that most GTCC waste streams are actually suitable for near-surface disposal. I believe that updating the overall LLRW regulatory framework to account for these evaluations while ensuring the protection of the public health and safety is warranted. Accordingly, I approve the staff's recommended path forward with some additional considerations, as outlined below.

Re-proposing 10 CFR Part 61

In this paper, the staff recommends issuing a new proposed rule that would consolidate and integrate the ongoing 10 CFR Part 61 and GTCC rulemaking efforts. Both rulemaking efforts have a long history and combining them would allow stakeholders to review and comment on the entire updated proposal at one time rather than referencing separate documents in different stages of agency deliberation. I agree with this approach, given the complexity of the scientific, policy, legal, and technical information needed to support the rulemaking efforts.

Agreement States Authority

An issue that has generated significant debate is the authority of Agreement States to regulate GTCC. While I understand and respect the different opinions on this matter, I do not believe that the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Amendments Act) prohibits Agreement States from licensing the disposal of most GTCC waste streams. Under Section 274c.(4) of the Atomic Energy Act of 1954, there is already a pathway for Agreement States to license these facilities. Additionally, while the staff has made a technical determination that most GTCC waste can be safely regulated by an Agreement State, the NRC currently has no specific technical safety and security requirements for GTCC disposal.

As the nation's nuclear safety regulator, we should establish comprehensive requirements to ensure appropriate controls are implemented and sufficient analyses are conducted to provide reasonable assurance of public safety, security, and environmental protection. I am confident that with clear regulatory requirements, Agreement States will be able to establish adequate and compatible programs for LLRW disposal to institute a consistent regulatory approach across the nation. It is worth noting, that the NRC will retain a leadership and oversight role by periodically reviewing the performance of the Agreement States, and NRC staff will be available to provide technical support, as needed. I also trust the staff to provide ample engagement opportunities for Agreement States and members of the public as the rulemaking progresses to consider their views and address their concerns.

Chairman Hanson's Comments on SECY-20-0098, "Path Forward and Recommendations for Certain Low-Level Radioactive Waste Disposal Rulemakings"

Performance Objective

Lastly, establishing appropriate regulatory requirements for the post-closure period at disposal sites has been, and will continue to be, one of the most challenging regulatory issues faced by the agency. It is important to establish a robust regulatory framework to protect future generations—thousands of years from now. The staff has indicated that they are planning to reinstate "the 1,000-year compliance period while performing a qualitative analysis for beyond 1,000 years and apply the 1,000-year compliance period to the inadvertent intruder performance objective in 10 CFR 61.42 and the site stability performance objective in 10 CFR 61.44." For GTTC, the staff indicated that they are expecting to impose requirements essentially identical to those currently proposed in the 10 CFR Part 61 rulemaking.

I do not agree with this approach. The staff should take another look at the technical basis for the performance objectives in Part 61 and ensure the compliance period is based on scientific data. I am not convinced that using the same compliance period for disposal sites containing significant amounts of depleted uranium, GTTC, and TRU waste will be adequate. Instead, the staff should consider a site-specific, graded approach based on when the peak dose is projected to occur or establish a longer compliance period for disposal sites containing significant quantities of mobile, long-lived radionuclides. If during its development of the new proposed rule the staff determines that provisions in the final rule provided to the Commission in SECY-16-0106 are protective of public health and safety, including for long-lived radionuclides, the staff should propose those provisions to the Commission.

Therefore, although I approve combining both rulemaking efforts, I reserve judgment on the proposed criteria for licensing facilities containing significant quantities of long-lived radionuclides until I have seen the technical basis for the re-proposed rule.