

June 18, 1997

SECY-97-125

FOR: The Commissioners

FROM: L. Joseph Callan  
Executive Director for Operations

SUBJECT: COMMENTS ON THE DRAFT BRANCH TECHNICAL POSITION ON  
LOW-LEVEL RADIOACTIVE WASTE PERFORMANCE ASSESSMENT  
(NUREG-1573)

PURPOSE:

To inform the Commission on how the staff plans to resolve comments from Agreement States on the draft Branch Technical Position (BTP) on low-level waste (LLW) performance assessment (tentatively identified as NUREG-1573), as directed by the Staff Requirements Memorandum (SRM) on Direction Setting Issue 5 (COMSECY-96-055). Also to inform the Commission that as a result of competing priorities in the budget, completion of the BTP is now anticipated in FY 1999 and the staff will not document the supporting LLW test case, which would demonstrate the LLW performance assessment methodology in the BTP. The reprioritization of resources is currently under review as part of the FY 1999 budget process.

BACKGROUND:

On May 17, 1996, the staff informed the Commission about staff policy recommendations on four principal regulatory issues in LLW performance assessment (SECY-96-103). The four regulatory issues of concern are: (1) timeframe for LLW compliance; (2) consideration of future site conditions, processes, and events; (3) performance of engineered barriers; and (4) treatment of sensitivity and uncertainty. The purpose of informing the Commission about the proposed staff positions was to obtain approval to publish, for public comment, a draft BTP on LLW performance assessment. In accordance with direction received from the Commission in the SRM dated August 7, 1996, the staff has issued, for public comment, the draft BTP.

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Also, as directed by the Commission, the staff specifically requested comment on the four policy issues identified in SECY-96-103.

Recently, the U.S. Nuclear Regulatory Commission has received comments on a previous preliminary draft of the BTP through the Commission's Strategic Assessment and Rebaselining Initiative. Although comments from Agreement States appear to have been mixed, one Agreement State strongly asserted that the BTP is unnecessary and will disrupt LLW disposal site licensing efforts. In recognition of this Agreement State concern, the Commission directed the staff, by the SRM on COMSECY-96-055, to inform the Commission on how it will address Agreement State comments after the public comment period, but before deciding to finalize the BTP.

#### DISCUSSION:

In January 1994, a preliminary draft BTP on LLW performance assessment was distributed to all States with existing LLW facilities, host Agreement States, the Advisory Committee on Nuclear Waste (ACNW), the U.S. Department of Energy, the U.S. Environmental Protection Agency, and the U.S. Geological Survey. The preliminary draft BTP was provided to share with and obtain input, from Agreement State regulatory authorities and other Federal agencies with an interest in LLW disposal, on the positions the staff is considering on LLW performance assessment. The staff received written comments on the preliminary draft BTP, and received additional verbal comments during deliberations at a November 1994 LLW performance assessment public workshop held at NRC Headquarters. Comments and questions received during those interactions were primarily of a technical nature; however, several comments did address the specific policy issues contained within the BTP. All of these comments were considered in the staff's development of the public comment draft of the BTP.

In comments on the Commission's Strategic Assessment and Rebaselining Initiative and in a presentation to the ACNW (August 22, 1996), one Agreement State criticized the BTP as "unnecessary and disruptive." As presented to the ACNW, that State's opposition to the BTP is based on its disagreement with the staff's proposed regulatory compliance period of 10,000 years. The State believes that 10 CFR Part 61 does not mandate a compliance calculation beyond 500 years, and, in any case,

inherent limitations of performance assessment "abilities" limit the credibility of these assessments to a 500-year timeframe of consideration. The staff had previously commented on this issue in SECY-96-103, where it stated the belief that short compliance periods, such as the 1000-years being used in dose assessments of decommissioning facilities, are generally inappropriate for assessments of LLW facilities because they could rely primarily on the performance of the engineered barriers for meeting the performance objective and not provide sufficient evaluation of the performance of the site. The staff's rationale for its proposed position on a 10,000-year timeframe for performance assessment is set forth in the draft BTP for public comment. However, to obtain a broader range of views on this issue, staff has specified, in the Federal Register notice, which announces the availability of

the draft BTP for public comment, that it desires further public comment on the appropriateness of a 10,000-year timeframe of compliance for LLW facilities.

Copies of the draft BTP will be mailed to regulatory authorities in Agreement and non-Agreement States and to the aforementioned Federal agencies and other BTP workshop participants. At the conclusion of the public comment period, the staff will provide the Commission with an analysis and proposed disposition of public comments on the draft BTP, including those made on the preliminary draft BTP during the Strategic Assessment and Rebaselining Initiative. This comment analysis documentation will provide the rationale and technical basis for any recommendation to the Commission as to whether to proceed with finalization of the draft BTP.

#### RESOURCES:

The approach outlined for consideration of Agreement State comments will have no significant resource impacts outside of those needed to complete the response to public comment. However, it is likely that the effort to respond to public comments will be deferred until FY 1999 when resources are projected to be available for this activity. As a result of competing priorities in FY 1998, it has been necessary to reprogram resources from the LLW program to other high priority waste management activities, primarily Title I and Title II uranium recovery activities. This decrease in resources would delay completion of the BTP until FY 1999 and eliminate documentation of the LLW test case to demonstrate the LLW performance assessment methodology. This reprioritization is currently under review as part of the FY 1999 budget process.

#### COORDINATION:

This paper has been coordinated with the Office of the General Counsel, and it has no legal objection. The Office of the Chief Financial Officer has no objection to the resource estimates in this paper.

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