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US NRC
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October 20, 1999

Mr. David L. Meyer
Chief, Rules and Directives Branch
Division of Administrative Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

REFERENCE: Request for Comments; Proposed Compatibility Designation Change and Draft Emplacement Criticality Guidance for Low-Level Waste (Federal Register Vol. 64, No. 181 Page 50778-50781, September 20, 1999)

Dear Mr. Meyer:

The Nuclear Energy Institute (NEI),¹ is submitting the following comments in response to the Nuclear Regulatory Commission's (NRC) request for comments on the proposed compatibility designation change and draft emplacement criticality guidance for low-level waste that appeared in the September 20, 1999 Federal Register. NEI supports consistency between NRC and Agreement State regulation of radioactive material. In this specific case we believe that the Agreement State regulations should be revised to reflect the change from the "Not Required for Compatibility" category to the "Health and Safety" category for 10 CFR Part 61.16(b)(2).

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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This change will assure that low-level waste disposal facilities, licensed by an Agreement State, will put in place procedures to avoid accidental nuclear criticality during the storage and disposal of waste that contains Special Nuclear Material (SNM). There is no such equivalent Agreement State requirement and, therefore, a regulatory gap exists. The NRC regulates SNM through delivery to the waste disposal site. Once it is off-loaded from the transportation vehicle regulations of the Agreement State apply. Agreement State regulations are limited to the quantity of SNM that is in storage awaiting disposal or per disposal sector. In either case the maximum quantity of fissile isotopes is limited to less than 350 grams of uranium-235, or less than 200 grams of uranium-233 or less than 200 grams of plutonium or less than unity by the sum of the fractions. However, the transportation regulations allow greater quantities of SNM to be contained in a shipment, thereby creating operational problems and necessitating additional storage, handling, and unloading of SNM at the low-level waste disposal facilities. The NRC has recognized this regulatory inconsistency and has provided relief to the NRC-regulated community on a case-by-case basis. Therefore, the proposed modification to Agreement State regulations will simply put into effect what is currently NRC practice. This change should both clarify regulations and facilitate development of new low-level waste disposal facilities that are located in an Agreement State. For this reason, NEI endorses this proposed change.

We have reviewed draft NUREG/CR -6626 ORNL/TM-13765 "Emplacement Guidance for Criticality Safety in Low-Level-Waste Disposal" and have no comments on it.

Please let me know of any questions or comments the NRC may have.

Sincerely,



Felix M. Killar, Jr.

c: Marvin Fertel
Dr. Carl J. Paperiello, Deputy Executive Director, Materials, Research and
State Programs, NRC
Mr. William Kane, Director, NMSS/NRC