

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Gregory B. Jaczko

SUBJECT: COMWDM-11-0002/COMGEA-11-0002 - REVISION TO
10 CFR PART 61

Approved X Disapproved X Abstain

Not Participating

COMMENTS: Below Attached X None



SIGNATURE

1/6/12

DATE

Entered on "STARS" Yes x No

**Chairman Jaczko's Comments on COMWDM-11-0002/COMGEA-11-0002,
"Revisions to 10 CFR Part 61"**

As discussed below, I approve in part, and disapprove in part, of the direction proposed in Commissioner Magwood's and Commissioner Apostolakis' COM regarding revisions to 10 CFR Part 61. In my August 2010 vote on SECY-10-0043 regarding the blending of low-level waste (LLW), I expressed concern that we were addressing various important waste issues in a piecemeal fashion. At that time, I stated that revising Part 61 in a limited way to account for unique waste streams and then revising it again later to complete a larger update to Part 61 would be an inefficient and ineffective way to use agency and stakeholder resources. I proposed in my vote that the staff instead be directed to proceed directly to completely update Part 61 and its associated guidance. Now, 14 months later, we are considering a proposal in this COM that the scope of this currently ongoing rulemaking be expanded to include all the "important questions associated with revising 10 CFR Part 61, e.g., waste classification" with the thought that taking such a path would obviate the need to launch a second, more protracted rulemaking effort later. I previously supported this approach and I continue to support it now.

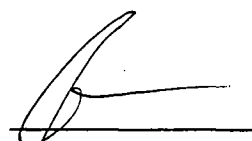
I note that staff has been working on this rulemaking for more than three years, and is now only a few weeks from delivering their recommendations and draft rule to the Commission. I find it unfortunate that we are giving them this different direction at such a late date in the process, thereby causing the staff to have to go back and revise its technical basis and proposed rule language, as well as repeat some of its significant stakeholder outreach. I wish to assure the staff that it has done an excellent job in its technical analysis, as well as stakeholder outreach. This change in direction regarding the scope of the rule does not in any way reflect on the staff's performance, process, or approach.

Because the staff has not had the opportunity to present its technical analysis or even its recommendations to the Commission, I join Commissioner Ostendorff in withholding my judgment on whether the specific items in the COM should be included in the proposed rule. I am extremely wary of any unintended consequences that may result from circumventing the normal process of allowing for the complete staff vetting of such rule changes. For example, the compliance period is something that the agency staff has been working on with stakeholders for more than two years. Disposal of very long-lived waste, such as large quantities of depleted uranium from enrichment facilities, poses a unique challenge that may not fit comfortably into the paradigm that the agency has, up until now, used for disposal of mostly short-lived waste. It requires careful consideration and analysis. I am not willing to jump to a conclusion as to whether or not staff is proposing the appropriate amount of time when the staff has not had the chance to present their approach and analysis in a Commission paper or the associated proposed rule language. I agree with Commissioner Ostendorff that the staff should consider previous agency guidance, the approaches of international and domestic agencies, and the technical considerations associated with disposal of long-lived waste. I also note that it is my understanding, from my discussions with the staff, that they are already taking these types of information into account.

Similarly, adding the option for the use of Waste Acceptance Criteria is an approach that has not been considered at all by the staff during this limited scope rulemaking, and they have not had the opportunity to flesh out the pros and cons of such an approach either internally or with stakeholders. In fact, none of our stakeholders have had the opportunity to publicly weigh in on any of the items proposed in this COM. Therefore, I am not willing to pass judgment on these issues without the staff's in-depth analysis and opportunity for input. The direction to the staff resulting from this COM should not include language stating that these specific items should be added to the rule but rather that they should be considered by the staff during rule development.

The issue that gives me pause in this approach is the 18 months that would be added to the timeframe for developing the proposed rule. The draft proposed rule is currently due to the Commission in early 2012. Assuming that the staff can meet the 18 month timeline, which is certainly not assured, would mean that the proposed rule would now be due to the Commission in late 2013. Because there is significant interest in revising Part 61, it's likely that the final rule would not come to the Commission until early 2015 or later. Agreement States, which regulate all of the existing disposal sites, would have yet another three years to adopt the revised Part 61, meaning that this final rule would likely not be in effect for disposal sites until at least seven years from now, in 2018, or later. This would be ten years or more after the issue of safety concerns with the disposal of depleted uranium was raised to the Commission in 2008 (SECY-08-0147).

One reason that the Commission previously approved a "limited" rulemaking for Part 61 was so that the rule could be completed more quickly. The staff has clearly stated that the disposal of large quantities of depleted uranium can pose a safety concern. As stated by the Commission in SRM-SECY-08-0147, "...there may be a need to place additional restrictions on the disposal of the depleted uranium at a specific site or deny such disposal based on unique site characteristics and those restrictions should be determined by a site specific analysis which satisfies the requirements of the proposed new 61.55(a)(9)." With respect to disposal of blended waste, the Commission shared this concern in its October 2010 SRM, and stated that entities wishing to pursue large scale blending should be encouraged to wait until the revised Branch Technical Position (BTP) is published in final form. The BTP is currently scheduled to be completed in late 2012. However, at the time the Commission made that statement, the rulemaking was due to be completed not too long after the BTP. Now we find ourselves in the position of a final rule not being in place for at least another six years and possibly longer, with the safety concern left unaddressed during that time. Therefore, these wastes should not be disposed of until the final rule is in place. The staff should work with the Office of General Counsel to determine what actions should be taken by the agency to prevent such disposal until the rule is finalized. The staff should also immediately notify the Commission if it appears that there may be a health and safety concern at any time during the rulemaking timeframe.



Gregory B. Jaczko



Date

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: COMWDM-11 - 0002 /COMGA-11-0002 - REVISION TO
10 CFR PART 61

Approved XX In Part Disapproved XX In Part Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached XX None ___



SIGNATURE

01/6/12

DATE

Entered on "STARS" Yes No _____

**Commissioner Svinicki's Comments on COMWDM-11-0002/COMGEA-11-0002
"Revision to 10 CFR Part 61"**

As outlined in this joint COM from two of my colleagues, I approve revisiting the Commission's previous direction to the staff provided in response to SECY-08-0147 "Response to Commission Order CLI-05-02 Regarding Depleted Uranium," and SECY-10-0043, "Blending of Low-Level Radioactive Waste." I approve in part and disapprove in part issuance of revised direction to further risk-inform elements of 10 CFR Part 61 as part of the currently ongoing rulemaking, as outlined below. I also join Chairman Jaczko and Commissioner Ostendorff in reserving judgment on the form these elements should take in any final rule, until the proposals have undergone staff evaluation and have benefited from stakeholder engagement and public comment as part of the rulemaking process.

I approve expanding the current 10 CFR Part 61 rulemaking to encompass the following proposals:

- 1) Establish a compliance period that covers the reasonably foreseeable future and does not adopt an *a priori* period of performance.
- 2) Provide flexibility for disposal facilities to establish site-specific waste acceptance criteria based on the results of the site's performance assessment and intruder assessment, as an alternative compliance strategy to the current classification system.

I agree with Commissioner Ostendorff that the lack of an evaluation by the NRC staff, as well as stakeholder comments, makes it difficult to inform a decision on the appropriate compatibility categorization for the issues outlined in the COM. I support his preliminary guidance that the staff's proposals with regard to the compatibility category of the potential requirements should ensure alignment between the States and the Federal government on safety fundamentals, while providing States, to the extent possible, with the flexibility to determine how to implement these safety requirements.

Although I continue to support the Commission's existing direction to include in the rule the requirement for a site-specific performance assessment, I disapprove issuing direction to expand the rulemaking, at this time, to require the use of the "most up-to-date" (i.e., ICRP 103) ICRP dose methodologies. I understand from the staff that this could have the potential to significantly prolong the duration of the development of the proposed rule. I think that the development of the proposed rule should not be further delayed in order to accommodate this particular revision. For the limited set of expansions I have approved, I believe that the staff should provide a proposed rule to the Commission within 12 months of the Commission's Staff Requirements Memorandum.



Kristine L. Svinicki

01/6/12

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER OSTENDORFF
SUBJECT: COMWDM-11 -0002 /COMGA-11-0002 - REVISION TO
10 CFR PART 61

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached None _____

W. Ostendorff
SIGNATURE

12/8/11
DATE

Entered on "STARS" Yes No _____

**Commissioner Ostendorff's Comments on COMWDM-11-0002/COMGEA-11-0002,
"Revisions to Part 61"**

I approve of expanding the current 10 CFR Part 61 rulemaking beyond a limited scope to further risk-inform the staff's approach. I appreciate that Commissioners Magwood and Apostolakis proposed modest changes to the ongoing rulemaking to address a longstanding need to further risk-inform 10 CFR Part 61. The changes proposed in the COM are relatively moderate revisions to provisions that are already in the rule. Therefore, from an efficiency perspective, it makes sense to consider the changes proposed in the COM at this time. Considering certain issues now could avoid, at least in part, a more complicated rulemaking in the future.

Given the high level of interest in the area of low level waste disposal, the extent of any rule changes will necessarily be informed by extensive feedback from our stakeholders beyond the initial feedback received on the current proposed rule language. Also, since the proposed rule has not been issued for public comment and I have not had the benefit of the staff's formal analysis of the issues addressed in the COM, I reserve judgment on whether the items discussed in the COM should be included in the final rule. The pros and cons of specific revisions proposed in the COM should be evaluated as part of the proposed rulemaking process. If any significant challenges which would substantially extend the rulemaking timeline beyond the 18 months proposed in the COM are encountered, the staff should notify the Commission and provide a proposed path forward. The staff's proposals and analysis of stakeholder feedback should be provided to the Commission as part of the final rule package.

Changes to 10 CFR Part 61 to address the safe disposal of depleted uranium and blended waste have been ongoing for over 3 years. Given the need to make progress on the current rule, I would caution against significantly extending the timeline for the current rulemaking. The changes considered as part of the current rulemaking should be limited to revisions to address the four issues identified as direction to the staff in the COM. The staff should, separate from any actions resulting from this COM, continue to pursue the possibility of the other risk-informed revisions to 10 CFR Part 61 in the future.

There is a diversity of opinions on the issue of period of compliance, and I agree with Commissioners Magwood and Apostolakis that a two-tiered approach with a period of compliance and a longer term evaluation is appropriate. The agency's final decision on this issue will be influenced as much by policy as technical considerations. At such an early stage of the rulemaking process, I currently do not have sufficient information to judge the appropriate period of compliance. However, I find it appropriate to provide some general guidance on the issues to be considered in the staff's analysis. In establishing a period of compliance, the staff should balance all of the principles in the National Academy of Public Administration's June 1997 report, previous agency guidance, the approaches of international and domestic agencies, and the technical considerations associated with long lived waste.

Similarly, I do not currently have sufficient stakeholder and staff feedback to make a decision on the appropriate compatibility categorization for the issues outlined in the COM. However, early

guidance to the staff on the approach for evaluating the appropriate compatibility categorization may be valuable given the various positions and policy considerations that will shape the Commission's final decision. The staff's proposals with regard to the compatibility category of the potential requirements should ensure alignment between the states and federal government on safety fundamentals, while providing the states with the flexibility to determine how to implement these safety requirements.