State of Utah

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Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Scott T. Anderson
Director

November 16, 2017

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555–0001

RE: Rulemakings and Adjudications Staff

RE: Request for Comments on the "Draft Regulatory Analysis for Final Rule: Low-Level Radioactive Waste Disposal"
Docket ID NRC-2011-0012

Dear Madam Secretary:

As the Director of the Utah Division of Waste Management and Radiation Control, I appreciate the opportunity to provide comments on the referenced document. As both an Agreement State and a sited state of a commercial low-level radioactive waste (LLRW) disposal facility, I recognize the importance of the overall rulemaking effort to amend 10 CFR Parts 20 and 61 and to include vital supporting rulemaking information, such as the referenced regulatory analysis and the technical guidance document. Collectively, these important documents reflect the various contributions and significant commitment of all involved in this rulemaking effort. I particularly commend the NRC staff in their efforts to engage the Agreement States and sited states throughout this entire process.

I offer the following comments and individual responses to the questions posed in the *Federal Register* notice of October 17, 2017 (82 FR 48283) for your consideration in preparing a revised draft regulatory analysis for the supplemental proposed rulemaking for 10 CFR Part 61. However, from my perspective, it is difficult to offer responses to the questions in the absence of the necessary regulatory context of the supplemental proposed rule.

General Comments

Since Utah is a member of the Low-Level Radioactive Waste Forum's Part 61 Working Group, I also offer my support for and concurrence with the comments submitted by the Working Group on behalf of the Forum.

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With the Commission's recent direction, as stated in SRM-SECY-2016-0106 (ML17261B147), to enhance the cost-benefit analysis of the supplemental proposed rule, I support the need for such updated information to better reflect the impacts associated with the proposed rulemaking. Specifically, I believe the current draft regulatory analysis should be updated in order to account for more timely and valid financial information associated with the proposed site-specific performance assessment requirements.

Although indirectly related, I also reaffirm our position of and support for the need for the Commission to retain the regulatory flexibility that exists in the staff's proposed final rule (SECY-16-0106) by designating the key proposed changes as compatibility category C. This will provide Agreement States, such as Utah, the necessary flexibility to retain their existing rules addressing the disposal of depleted uranium and remain compatible with NRC's corresponding regulations.

Responses to Questions

Question 1: **Is the NRC considering appropriate alternatives for the regulatory action described in the draft regulatory analysis?**

The two alternatives presented in the draft regulatory analysis (RA) are 1) no action and 2) rulemaking to amend Part 61. From a broad perspective, these seem to be the only real alternatives to consider for the regulatory analysis. Additionally, the Commission has been clear in its direction to staff that rulemaking to amend Part 61 is the preferred approach. Consequently, amending Part 61 is the only viable option. From our perspective, the real issue is the NRC will need to revise the RA in order to account for the changes to be incorporated by the supplemental proposed rule. A revised RA should be developed in tandem with the supplemental proposed rule and be offered for public review and comment concurrent with the supplemental proposed rule.

Question 2: **Are there additional factors that the NRC should consider in the regulatory action? What are these factors?**

It is uncertain that the NRC staff would be able to consider additional regulatory actions beyond the direction of the Commission, as outlined in SRM-SECY-2016-0106. However, with the direction to reinstate the "grandfathering provision" of 10 CFR 61.1(a), a revised regulatory analysis could potentially be more clear, amplify the existing analysis, or at least provide a focused explanation with respect to the reduced or eliminated costs associated with the two existing LLRW disposal sites that are not considering the disposal of large quantities of waste containing long-lived radionuclides, such as depleted uranium (DU), and therefore would not need to undertake a site-specific performance assessment to address such wastes. This would seem to be consistent with the Commission direction to broaden and more fully integrate the cost-benefit analysis as a means to better inform the costs and benefits of the additional changes of the supplemental proposed rule.

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Question 3: **Is there additional information concerning regulatory impacts that the NRC should include in its regulatory analysis for this rulemaking?**

In addition to the previous response to Question 2, the revised regulatory analysis could address the implementation costs, both internal and external, associated with an Agreement State/sited state to fully inform and engage the public and interested stakeholders not only through the rulemaking process to incorporate the new changes, but also throughout the entire site-specific performance assessment process, including any potential administrative and/or adjudicative proceedings.

Question 4: **Are all costs and benefits properly addressed to determine the economic impact of the rulemaking alternatives? What cost differences would be expected from moving from the discussed 1,000 year and 10,000 year compliance periods to a single 1,000 year compliance period? Are there any unintended consequences of making this revision?**

See previous responses for the first question.

One of the most significant cost differences in moving to a single 1,000-year compliance period would be a marked reduction in the cost to the disposal facility in a less robust demonstration in complying with the performance objectives. A significant cost reduction would also be realized in implementation costs. For example, ensuring the stability of the site for a 1,000 years, rather than 10,000 years, clearly creates a significant reduction in the associated costs.

Overall, as long as the compatibility designation for the compliance period continues to allow Agreement States the regulatory flexibility necessary to meet state-specific regulatory needs and circumstances, then the potential exists for an Agreement State to tailor its rules while maintaining compatibility. Otherwise, moving to a single compliance period of 1,000 years for determining compliance with the performance objectives, particularly for a site intending to dispose of DU with its extremely long-term radiological characteristics, creates a significant regulatory shortfall. DU simply needs a much longer compliance period. We believe the staff's recommended definition of "compliance period" in their draft final rule adequately addresses the unique circumstances for both short-lived and long-lived radionuclides.

Question 5: **Are there any costs that should be assigned to those sites not planning to accept large quantities of depleted uranium for disposal in the future?**

Depending on the nature and extent of the changes with the supplemental proposed rulemaking, sites not planning to accept large quantities of DU may still need to account for the costs associated with closure, as envisioned by the staff's draft final rule.

Question 6: **Is NRC's assumption that only two existing LLRW sites (*i.e.*, EnergySolutions' Clive Utah disposal facility and Waste Control Specialists' Texas disposal facility) plan to accept large quantities of depleted uranium for disposal in the future reasonable?**

Yes, at least for the purposes of a regulatory analysis associated with the current Part 61 rulemaking, including the supplemental proposed rule.

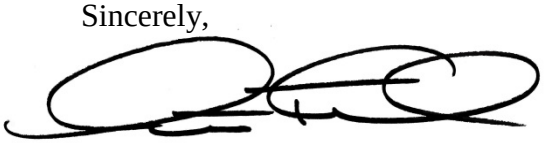
Question 7: **What additional costs or cost savings, not already considered in the draft regulatory analysis, will the supplemental proposed rulemaking or alternatives cause to society, industry, and government? What are the potential transfer (''pass-through'') costs to the waste generators and processors?**

> *As an Agreement State and the regulatory agency responsible for the licensing and oversight of a commercial low-level radioactive waste disposal facility and in the absence of the specific changes for the supplemental proposed rule, it seems somewhat premature and is difficult to identify or quantify the cost-benefit impacts and provide a more useful response.*

I again express appreciation for the opportunity to provide my comments and responses and thank you for your consideration of such in revising the referenced regulatory analysis.

If you have any questions or comments, please contact Rusty Lundberg by phone at (801) 536-4257 or by email at rlundberg@utah.gov.

Sincerely,



Scott T. Anderson, Director
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