

<b>As of:</b> 7/24/15 11:02 AM <b>Received:</b> July 23, 2015 <b>Status:</b> Pending_Post <b>Tracking No.</b> 1jz-8k5b-aslq <b>Comments Due:</b> July 24, 2015 <b>Submission Type:</b> Web
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# PUBLIC SUBMISSION

**Docket:** NRC-2011-0012  
Low-Level Radioactive Waste Disposal

**Comment On:** NRC-2011-0012-0077  
Low-Level Radioactive Waste Disposal

**Document:** NRC-2011-0012-DRAFT-0126  
Comment on FR Doc # 2015-06429

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## Submitter Information

**Name:** Mike Garner

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## General Comment

Thank you for providing the opportunity for the Northwest Compact to submit comments on NRC's 10 CFR Part 61 rulemaking (See attached file(s))

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## Attachments

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**Northwest Interstate Compact**  
On Low-Level Radioactive Waste Management

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P.O. Box 47600. Olympia, Washington 98504-7600. Mike Garner, Executive Director (360) 407-7102

July 23, 2015

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
ATTN: Rulemaking and Adjudications Staff

Subject: Docket ID NRC-2011-0012 (Proposed Rule Changes, 10 CFR Part 61)  
Submitted Online via Regulations.gov

Dear Madam Secretary:

The Northwest Interstate Compact would like to thank the U.S. Nuclear Regulatory Commission (NRC) for the opportunity to comment on the 10 CFR Part 61 proposed rulemaking. We strongly support the efforts of NRC to engage stakeholders and greatly appreciate the public meetings that NRC held in the sited states during May and June of 2015.

The following comments are offered by the Northwest Interstate Compact.

Background

The Low-Level Radioactive Policy Amendments Act of 1985 identifies those low-level radioactive wastes that are a state or interstate compact responsibility and those that are a federal government responsibility.

The U.S. Enrichment Corporation Privatization Act explicitly states the U.S. Department of Energy (USDOE) is responsible for LLRW (depleted uranium) generated by any uranium enrichment facility. States and interstate compacts have no liability for LLRW generated by these operations.

NRC is proposing significant changes to 10 CFR Part 61 as a result of two commercial disposal sites, Waste Control Specialists' Andrews County, TX and EnergySolutions' Clive, UT, that are pursuing large volumes of depleted uranium for disposal. As a result, NRC needs to develop regulations that address the disposal of large volumes of depleted uranium at commercial sites.

The country will need additional LLRW disposal sites by 2050. The Richland, WA disposal site will begin final closure activities in 2056; EnergySolutions' Clive, UT disposal site has 30 years of licensed capacity remaining and; additional nuclear utilities are scheduled to be decommissioned in the next 20-40 years.

*ALASKA. HAWAII. IDAHO. MONTANA. OREGON. UTAH. WASHINGTON. WYOMING*

Future LLRW disposal site development depends on the following factors:

1. Technical analysis demonstrating LLRW is disposed in a manner protective of public health and safety.
2. Just as importantly, site development requires local community, state, and public support before it can commence.
3. Stability in regulations governing LLRW disposal site operation.

#### Unintended Consequences of Proposed Rulemaking

NRC's proposed implementation of the rule undermines the dynamics found in the Low-Level Radioactive Waste Policy Amendments Act of 1985 as it universally incorporates rules that apply to a waste stream, depleted uranium, which is not even a state or interstate compact responsibility. This does not seem equitable.

Those commercial disposal sites that have no intention of accepting large volumes of depleted uranium for disposal will be subject to the economic burden of implementing the rule without receiving any economic benefit.

- Any licensee expense associated with the implementation of the proposed new regulations for the Richland, WA disposal site will be passed on to the generators in the form of higher disposal fees. The disposal rates of the Richland, WA license, US Ecology, are regulated by the Washington State Utilities and Transportation Commission. Seeing as this is a necessary expense to meet the new regulatory requirement, this expense would be added to US Ecology's annual revenue requirement which will result in increased disposal fees for LLRW generators using the Richland, WA facility.

Application of the rule to all commercial disposal sites undermines the stability of regulations governing traditional LLRW disposal.

- States may be hesitant to support site development as the rules can change at any time to allow extremely different waste streams than those contemplated during the original public process.
- It may make the public hesitant to support LLRW disposal site development as they recognize the rules can change significantly at any time which makes it difficult to know what they are truly supporting.

It is unlikely that a new disposal site meeting the requirements of the proposed rule could receive the public support necessary for site development. This results from the incorporation of large volumes of depleted uranium or other long-lived radionuclides and likely makes such a site un-siteable.

- Currently, state and compact representatives can inform the public the activity of LLRW disposed at a commercial disposal site will decay to 1% of its original activity within 500 years following disposal. The mere association of large volumes of depleted uranium compromises the ability of representatives to state this and this is an important loss.

- At the June 10, 2015 NRC public meeting in Salt Lake City, UT an NRC representative was asked if NRC had evaluated how the new rule may impact future site development. The representative indicated NRC had not evaluated this. I think it is in the best interest of our country to ensure that new regulations do not preclude the development of new LLRW disposal sites. If this were to occur, what good are the new rules if you have no commercial LLRW disposal sites in the future to apply the rules to?

#### Methods to Reduce Unintended Consequences

The new rule should apply only to those commercial LLRW disposal sites that seek to dispose of large volumes of depleted uranium; a USDOE responsibility.

- This could be accomplished through the incorporation of these requirements within a separate section or subpart of 10 CFR Part 61 that applies only to those disposal sites that choose to accept large volumes of depleted uranium for disposal.
  - One option is to include these regulatory requirements in a new subpart, Subpart H.
  - Another option is to include a new section under Subpart D, 61.60.

In each case these new regulations would apply only to those commercial LLRW disposal facilities seeking large volumes of depleted uranium or other long-lived radionuclides for disposal. This separation is needed in an effort to preserve future site development opportunities. Without such separation new site development is unlikely. Three of the four sited states support this approach.

#### Benefits of Alternate Implementation

- Aligns more closely with the tenets of the Low-Level Radioactive Waste Policy Amendments Act of 1985.
- Limits the economic burden to those commercial LLRW disposal sites that will benefit economically from the acceptance of large volumes of depleted uranium for disposal.
- Maintains a higher level of stability in the regulations governing the disposal of traditional LLRW.
- Makes future site development more difficult, but much less difficult than if the rule is applied to all commercial LLRW disposal sites.

#### Additional Comments

It is important to recognize it is unlikely there would be a current 10 CFR Part 61 rulemaking if two of the four commercial sites had not expressed an interest in accepting large volumes of depleted uranium for disposal.

There would seem to be significant benefit to be gained by leaving the current regulations governing the disposal of traditional LLRW in place. The current regulations are effective for traditional LLRW as NRC states on page 16099 of the Federal Register Notice the following:

*Because of the conservative nature of the assumptions used in the original 10 CFR Part 61 regulatory basis to develop the LLRW classification, the LLRW classification system is expected to be protective of public health and safety as long as LLRW disposal facilities operate within the regulatory basis of the original 10 CFR Part 61 regulations.*

These regulations have been effective for the disposal of traditional LLRW and the public is familiar with them. This approach provides stability for the disposal of traditional LLRW; whereas the universal application of the new regulations will disrupt this stability as the public will have to learn an entirely new, very complicated system it is currently unfamiliar with.

In an attachment to a February 19, 2014 letter submitted to Chairman Macfarlane by the Advisory Committee on Reactor Safeguards Dr. J. Sam Armijo states in his last paragraph:

*Absent a safety concern or benefit, it is not reasonable to impose such uncertainties or burdens on licensees who choose to make no changes in the waste streams they receive in the future. Imposition of more stringent requirements on future disposals could also raise public concerns regarding the safety of low level waste previously disposed of in compliance with existing regulations. This problem could be corrected by making the new rule applicable only to licensees engaged in the disposal of large quantities of DU.*

The Northwest Compact agrees with the above statement made by Dr. Armijo.

The Northwest Compact strongly supports the separation of regulations governing the disposal of large volumes of long-lived radionuclides such as depleted uranium from those regulations governing the disposal of traditional low-level radioactive waste. This separation is necessary if new, traditional low-level radioactive disposal sites are to be developed in the future. It is much more equitable as these regulations are being developed to address the disposal of a waste stream, depleted uranium, which is not a state or interstate compact responsibility.

### Specific Questions

Why is NRC so set on the universal application of the proposed 10 CFR Part 61 rulemaking when the option exists for including the requirements governing the disposal of large volumes of long-lived radionuclides, such as depleted uranium, in a new section or subpart? The separation of these requirements would be more equitable; less disruptive; doesn't require the public to assimilate complex, new regulations for traditional LLRW streams; and reduces the negative impact on future site development. The separation of these requirements still allows NRC to develop regulations that address the disposal of large volumes of long-lived radionuclides, such as depleted uranium, at those commercial facilities that choose to accept such waste streams.

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U.S. Nuclear Regulatory Commission  
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Why did NRC choose not to evaluate the potential impact of the universal application of this proposed rulemaking on future site development? This seems like an important issue to consider if NRC expects states and interstate compacts to successfully site future commercial LLRW disposal sites prior to the closure of the current sites.

The Northwest Compact would like to thank NRC for the opportunity to provide comments on the proposed 10 CFR Part 61 rulemaking.

Sincerely,

A handwritten signature in cursive script that reads "Mike Garner".

Mike Garner, Chair/Executive Director  
Northwest Interstate Compact

cc: Northwest Interstate Compact Committee