



**Low-Level Radioactive Waste Forum, Inc.
Part 61 Working Group**

November 19, 2019

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

Docket ID No.: NRC-2017-0081

RE: Comments on the Draft Regulatory Basis for the Disposal of Greater-than-Class C (GTCC) and Transuranic Waste (RIN number: 3150-AK00)

Dear Secretary:

On behalf of the Low-Level Radioactive Waste Forum's Part 61 Working Group, we appreciate the opportunity to provide comments on the subject document.

The Low-Level Radioactive Waste Forum (Forum) is a non-profit organization of representatives appointed by Governors and compact commissions that seeks to facilitate compact and state implementation of the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments, as well as to promote the objectives of regional low-level radioactive waste disposal compacts. In 2012, the LLW Forum formed the Part 61 Working Group (P61WG) to provide input from the compacts and states on the 10 CFR Part 61 rulemaking initiative and related low-level radioactive waste matters. The P61WG is currently comprised of representatives from the sited-states of South Carolina, Utah and Washington, as well as a representative from the Commonwealth of Pennsylvania, as the designated host state in the Appalachian States LLRW Commission (Appalachian Compact).

On July 22, 2019, the U.S. Nuclear Regulatory Commission (NRC) published a notice of the availability of and request for comment on the Draft Regulatory Basis for the Disposal of Greater-than-Class C (GTCC) and Transuranic (TRU) Waste (84 FR 35037, July 22, 2019). In response to various requests from interested stakeholders, including the Forum's Part 61 Working Group, to extend the comment period, the NRC published on September 13, 2019, a subsequent notice in the *Federal Register* extending the comment period until November 19, 2019. We express our appreciation to the NRC for extending the comment period.

As a result of the NRC's July *Federal Register* Notice (FRN), the Forum reactivated the P61WG in order to perform an in-depth review of the draft document and FRN. We have reviewed the Draft Regulatory Basis and offer the following comments and note that more detailed comments addressing matters of specific importance or interest to individual members of the Form and the P61WG may also be submitted under separate letter for the NRC's consideration. This is important to note because some of the P61WG members have previously commented on the Department of Energy's 2011 Draft Environmental Impact Statement for GTCC and GTCC-like waste management. Accordingly, the

comments offered by the Forum's P61WG in this letter are intended to supplement and therefore not conflict with or duplicate those earlier comments.

First, we note that the Executive Summary of the Draft Regulatory Basis document clearly reaffirms the Commission's direction that the NRC staff prepare such a document for stakeholder review and comment. During the recent public meetings, some commenters expressed concerns regarding the management of radioactive waste that is more properly characterized as high-level radioactive waste and essentially outside the scope of the Draft Regulatory Basis for the Disposal of GTCC and TRU wastes. We appreciate the NRC staff's efforts during the public meetings to clarify the purpose and scope of the draft regulatory basis for GTCC and TRU waste disposal.

While the future need and importance of a national solution to the proper management of high-level radioactive waste is critical to the commercial nuclear power industry, we believe the scope of the GTCC and TRU waste discussion should not be overshadowed by such out-of-scope matters and that the final regulatory basis remain within the scope intended by the Commission. However, in order to provide added clarity, and in deference to the various comments offered during the recent public meetings, the NRC should provide in its supplemental information the context or relationship of high-level radioactive waste management matters. This information would clarify that such matters as those associated with potential interim storage facilities are beyond the Commission's direction to staff with respect to GTCC and TRU waste disposal options and are therefore beyond the purpose and scope of the subject regulatory basis.

As sited states that have the jurisdictional authority over the existing low-level radioactive waste (LLRW) disposal facilities, we believe it is important to emphasize current LLRW disposal standards and requirements are in place and serve as the foundation for ensuring the protection of public health and safety and the environment for LLRW disposal. We remain committed to this important role and responsibility and believe the regulatory basis for GTCC and TRU waste disposal should continue to reaffirm this. We note that the sited states in their role and responsibility as Agreement States have the expertise and technical resources to determine the acceptability of GTCC or TRU wastes for disposal in facilities meeting Part 61 requirements.

A final regulatory basis for GTCC and TRU waste disposal should be consistent with the Forum's mission to promote access for LLRW waste balanced with the need for flexibility for individual compacts and sited states in order to determine the acceptability of GTCC and TRU waste disposal with respect to state policy, site-specific conditions, and existing waste acceptance criteria, consistent with Part 61 requirements.

We support the Commission's direction in SRM-SECY-15-0094 for the need to harmonize the definition of transuranic waste (TRU waste) in 10 CFR Part 61 with the statutory definition found in current federal law as a matter of making the Part 61 regulations consistent with existing federal law.

As stated in the Draft Regulatory Basis, NRC rulemaking would be necessary to establish the relevant criteria and requirements for a LLRW disposal facility licensed under Part 61 by an Agreement State to accept and dispose of GTCC and/or TRU waste. For purposes of providing regulatory consistency and added flexibility for an Agreement State, we support the need for rulemaking, particularly one that is not overly cumbersome or lengthy. Following completion of the regulatory basis, we encourage the NRC staff to not delay in providing the Commission with a rulemaking proposal for the disposal of GTCC and TRU waste under Part 61. The Part 61 Working Group firmly believes the Commission reconsider decoupling the GTCC-TRU rulemaking and the proposed Part 61 rulemaking in order to fold the GTCC-TRU rulemaking into the proposed Part 61 rulemaking as a single rulemaking in a timely manner because of the inherent benefit of integrating both rulemaking efforts. Integrating both rulemakings is especially valid for those low-level radioactive wastes with similar long-lived isotopes. This could also serve to ensure that compacts and sited states can address the Part 61 changes in a single, more coordinated and consolidated effort. This would also allow a sited state to address specific state policy considerations regarding such unique wastes in a similar manner, while maintaining regulatory compatibility.

Additionally, the NRC should clarify that the GTCC-TRU rulemaking would allow TRU waste disposal based on a performance assessment that meets the performance objectives described in the proposed changes to Part 61.

Again, we appreciate the opportunity to provide comments on the Draft Regulatory Basis for the Disposal of GTCC and TRU Waste and look forward to your consideration of our comments. Should you have any questions or require additional information, please feel free to contact me on behalf of the Forum's Part 61 Working Group at (801) 536-4257 or rlundberg@utah.gov.

Sincerely,



Rusty Lundberg, Chair
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