

LOW-LEVEL RADIOACTIVE WASTE FORUM, INC.

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November 15, 2017

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

RE: Request for Comments on the Draft Regulatory Analysis for Final Rule re Licensing Requirements for Land Disposal of Low-Level Radioactive Waste (10 CFR Part 61) as Published at 82 *Federal Register* 48,283 Docket ID NRC-2011-0012

Dear Madam Secretary:

The Low-Level Radioactive Waste Forum (LLW Forum) is a non-profit organization of representatives appointed by Governors and compact commissions that seeks to facilitate state and compact 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 (P61 WG)—which 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—to provide input from the states and compacts on the 10 CFR Part 61 rulemaking initiative.

Prior Comments re Proposed Rule and Associated Technical Guidance Document

On March 26, 2015, the U.S. Nuclear Regulatory Commission (NRC) published a proposed rule to amend 10 CFR Part 61, *Licensing Requirements for Land Disposal of Radioactive Waste*, at 80 *Federal Register* 16,081 for public comment. On the same day, NRC also published a notice of availability of associated guidance, *Guidance for Conducting Technical Analyses for Low-Level Radioactive Waste Disposal*, for public comment at 80 *Federal Register* 15,930.

By letter dated July 22, 2015, the P61 WG submitted detailed comments to the NRC in response to the Part 61 proposed rule and associated technical guidance document. The P61 WG's letter identified six (6) specific areas of agreement with the proposed new rule language and offered sixteen (16) individual comments with regard to proposed changes concerning intruder analysis, institutional control period, performance assessment, defense-in-depth, and site stability.

In addition, the letter outlined nineteen (19) general comments regarding applicability of the proposed new requirements and policy considerations related to the Part 61 rulemaking initiative stating, in part, as follows:

The proposed new rule could have significant unintended consequences including the following: existing sites may consider early closure to avoid litigation risks incurred by the proposed rule amendments; the proposed rule will likely be a barrier for development of new sites for [low-level radioactive waste] disposal; and, the burdensome and unnecessary new language included in the proposed rule may deter investment in new disposal capacity. The rule should not overlie the new set of requirements on existing sites that desire to continue to use and apply the existing Part 61 requirements.

In its letter, the P61 WG also proposed an alternative approach under which NRC would maintain the 10 CFR Part 61 regulations as written for traditional low-level radioactive waste streams, as well as retain the current language in § 61.58 and its intended flexibility for NRC and Agreement States. In regard to waste streams that were not previously anticipated, however, the P61 WG recommended that NRC develop a new stand-alone § 61.60 or a new Subpart H as more fully explained in the ten (10) comments contained in the P61 WG letter dated July 22, 2015.

Lastly, the P61 WG provided seven (7) comments regarding compatibility categories and administrative issues, as well as recommending the performance of regulatory and back-fit analyses for the proposed rulemaking.

New Comments re Draft Regulatory Analysis

On October 17, 2017, NRC published a *Federal Register* notice requesting comment on the draft regulatory analysis, "Draft Regulatory Analysis for Final Rule: Low-Level Radioactive Waste Disposal," and seeking specific cost and benefit information to better inform the updated draft regulatory analysis. (See 82 *Federal Register* 48,283 dated October 17, 2017.)

In response, the P61 WG hereby submits this letter to

- support individual comments on the draft regulatory analysis that will be forthcoming from the states of South Carolina and Utah, which we believe should be accorded extra weight given their roles and responsibilities in regulating the existing low-level radioactive waste sites;

- re-state the collective comments and positions of the P61WG and the four sited states of South Carolina, Texas, Utah and Washington on the Part 61 rulemaking initiative as documented in our letter dated July 22, 2015 in response to the Part 61 proposed rule and associated technical guidance document that were issued on March 26, 2015;
- encourage NRC staff to follow the Commission's direction in the Staff Requirements Memorandum (SRM) re SECY-16-0106, as issued on September 8, 2017, that approved additional substantive revisions to the draft Part 61 final rule; however, upon publication of the supplemental proposed rule for a 90-day public comment period, the P61 WG strongly encourages NRC staff to take into account and provide deference to any feedback on the Commission's direction that is submitted by the states of South Carolina, Utah and Washington given their unique roles and responsibilities as site regulators; and,
- remind NRC staff as it proceeds with this rulemaking and any other related actions that the existing low-level radioactive waste sites represent national assets that must be preserved and that it is therefore imperative to avoid any unintended consequences that could put the continued operation of these sites in jeopardy; and

There is no information to suggest that the current regulatory framework for disposal of low-level radioactive waste is unsafe or is not adequately protective of public health and safety and the environment. We agree with the NRC staff statement in 80 *Federal Register* 16,082 (March 26, 2015) that current regulations "ensure public health and safety are protected in the operation of any commercial [low-level radioactive waste] disposal facility." The Integrated Materials Performance Evaluation Program (IMPEP) has repeatedly determined that low-level radioactive waste is being safely disposed of under the current regulatory framework and in accordance with site-specific licenses issued by the sited Agreement State.

On behalf of the P61WG, we appreciate the opportunity to provide input and feedback on the draft regulatory analysis. We look forward to our continued participation as NRC proceeds with the Part 61 rulemaking initiative and encourage agency staff to communicate with the sited states given their significant role and responsibilities.

Please feel free to contact me at (754) 779-7551 or at LLWForumInc@aol.com if you have questions or require additional information.

Regards,



Todd D. Lovinger, Esq.
Executive Director of the LLW Forum, Inc.
Project Director for the Disused Sources and Part 61 Working Groups

cc: Part 61 Working Group Members and Staff

- Earl Fordham, Washington
- Rich Janati, Pennsylvania
- Susan Jenkins, South Carolina
- Rusty Lundberg, Utah
- Gary Robertson, P61WG Technical Consultant