



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

November 16, 2017

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

RE: Draft Regulatory Analysis (82 FR 48283)
Final Rule: Low-Level Radioactive Waste Disposal
Docket ID NRC-2011-0012

Dear Madam Secretary:

The South Carolina Department of Health and Environmental Control (SCDHEC) appreciates the opportunity to provide comments on the draft regulatory analysis "Draft Regulatory Analysis for Final Rule: Low-Level Radioactive Waste Disposal", as published in the *Federal Register* on October 17, 2017 (82 FR 48283). SCDHEC believes the proposed revisions to the existing regulations directly impact the State of South Carolina as an Agreement State and as one of the four sited states, and looks forward to receiving the full consideration of the U.S. Nuclear Regulatory Commission.

Below are responses to the questions posed in the Federal Register, however please note that providing comments on the regulatory analysis without the benefit of reviewing the supplemental proposed rule (which has not yet been published) presents a challenge.

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

The NRC should consider the alternative of promulgating a new regulation (separate from 10 CFR Part 61) to set forth standards for the disposal of large quantities of depleted uranium (DU) or other unique waste streams that are considered low level radioactive waste suitable for shallow land disposal but that would require a site specific performance analysis and a potentially longer compliance period (greater than 1000 years). The standards would be based on work NRC staff has performed to date including the culmination of comments received from stakeholders and the direction of the Commissioners. A fourth alternative would be to set forth these standards in a new subpart within 10 CFR Part 61.

Through the decade long process of attempting to promulgate revisions to Part 61 to account for the future disposal of large quantities of DU, it seems obvious that one of the barriers in developing an effective regulation is the difference in appropriate standards (such as compliance

period) for disposal of traditional low level waste which is shorter lived compared to large quantities of longer lived radionuclides. Definitely separating these requirements would be a more straightforward and simple approach than trying to weave them into existing requirements. For those sites that choose to dispose of such waste, the new requirements could be incorporated by license condition referencing the new Part or Subpart.

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

It is important to keep in mind that the two sites (ES in Clive, UT and WCS in Andrews, TX) that are considered to be the only candidates for disposal of large quantities of DU have already performed relevant site specific performance assessments. Therefore the original intent of this regulatory revision has already been addressed and the costs associated with conducting a site specific performance assessment are definitive and do not require further analysis. Continuance of the regulatory process to revise 10 CFR Part 61 should consider this fact. NRC should consider how these regulatory revisions would affect the development of future sites.

Disposal capacity for low level waste is a national asset that should be protected and thus considered in any regulatory cost analysis. Regulatory requirements that are costly and burdensome without significant benefit put our existing sites at risk and could negatively affect the development of new sites.

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

It has not been made clear whether these revisions would apply to sites that are no longer operating but that have a license in effect that is held by the state. NRC should consider which, if any of these sites would be impacted and include any additional stakeholders in the discussion. NRC should consider whether such states would be responsible to pay the full cost of conducting any newly required assessments as opposed to only the costs of regulatory review.

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?

It is difficult to comment on costs or cost differences when the rules are not yet clear. If sites that do not intend to accept large quantities of DU or other unique waste streams are not required to submit a site specific performance assessment, there would be no cost to those states to review such an analysis. However, the cost to a sited state to review an intruder assessment and site stability analysis would remain a cost under the most recent SRM. In general, it is assumed this would be less costly than reviewing the site specific performance assessment but is still an additional review cost.

There is a cost to states to maintain involvement with a very lengthy regulatory process such as this one. It includes the time spent by staff to stay engaged including extensive review time, drafting of comments, meetings, conference calls, and travel.

NRC should consider the comments submitted previously by the State of South Carolina and the Low Level Waste Forum's Part 61 Working Group regarding costs to the sited states.

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?

The cost to a sited state to review an intruder assessment and site stability analysis would remain a cost under the most recent SRM.

It is unclear whether the cost to review a site specific technical analysis at the time of site closure would still apply. The formerly proposed rule would have required licensees to include updated site specific technical analyses in their application to amend their license for closure (instead of submitting an environmental report as currently required). If that requirement remains in the supplemental proposed rule even for sites that do not intend to accept large quantities of DU or other unique waste streams, then regulators would still bear the cost of review of a site specific technical analysis but later, at the time of closure. The cost for review of the initial analysis would likely be greater (due to inflation) but there would not be a cost associated with subsequent reviews. The cost of such a review would be greater than the cost of reviewing a supplemental environmental report as is currently required.

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?

The Barnwell disposal facility is not a candidate for future disposal of large quantities of DU for several reasons. The site is the designated disposal facility for the Atlantic Compact and its member states of South Carolina, Connecticut and New Jersey which are not known to currently have waste that fits into this category. Also, bulk disposal is typically not permitted at the facility and disposing of large quantities of DU or other unique waste streams in containers would be cost prohibitive.

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?

More information is needed about the supplemental proposed rulemaking to provide a meaningful response.

Thank you for considering these comments in finalizing the revisions to the Draft Regulatory Analysis for Final Rule: Low-Level Radioactive Waste Disposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Scaturo", with a long horizontal stroke extending to the right.

David Scaturo, PE, PG, Radiation Control Program Director
Director, Division of Waste Management
Bureau of Land and Waste Management
South Carolina Department of Health and Environmental Control

cc: Susan E. Jenkins, SC DHEC