



**NYSERDA**

**ANDREW M. CUOMO**  
Governor

**RICHARD L. KAUFFMAN**  
Chair

**ALICIA BARTON**  
President and CEO

December 18, 2017

May Ma  
Office of Administration  
Mail Stop: OWFN-2-A13  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Re: *Guidance for the Reviews of Proposed Disposal Procedures and Transfers of Radioactive Material Under 10 CFR 20.2002 and 10 CFR 40.13(a)*, 82 Fed. Reg. 48727, NRC-2017-1098 (Oct. 19, 2017)

Dear Ms. Ma:

On October 19, 2017, the U.S. Nuclear Regulatory Commission (NRC) released for public comment a draft document entitled "*Guidance for the Reviews of Proposed Disposal Procedures and Transfers of Radioactive Material Under 10 CFR 20.2002 and 10 CFR 40.13(a)*" ("Draft Guidance"). This document intends to provide guidance and describe the process for documenting, reviewing, and approving, on a case-by-case basis, requests received from licensees for alternative disposal of licensed radioactive material. The State of New York is pleased to have the opportunity to submit the following brief comments on the draft guidance, as the State opposes certain aspects of the guidance. Among its other comments below, the State of New York believes that consideration of recycling as an option under the cited regulations requires development of a consistent nationwide standard, not discussion only through a guidance document.

## Introduction

Under 10 CFR § 20.2002, "a licensee or applicant for a license may apply to the Commission for approval of proposed procedures, not otherwise authorized in the regulations in this chapter, to dispose of licensed material generated in the licensee's activities." Although this regulation and initial guidance have been operational for several years, this new guidance is the first time NRC has explicitly introduced transfer and recycling as a means of alternate disposal under 20.2002. Since disposal is not defined in NRC regulations, in this guidance it appears that the NRC has interpreted alternative disposal to mean disposal at a RCRA C or solid waste landfill, on-site burial, burial off-site on private property, transfer to another entity, and recycling.

The NRC guidance indicates that for recycling or reuse, the exemption is issued by the regulator of the licensee dispositioning the material. Draft Guidance at 27. The Draft Guidance further states the Agreement State receiving the material does not need to issue another exemption, as the exemption issued by the regulator would apply to all possessors of the material. This appears to eliminate any involvement by the regulator in the state where this material

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### New York State Energy Research and Development Authority

**Albany**  
17 Columbia Circle, Albany, NY 12203-6399  
(P) 1-866-NYSERDA | (F) 518-862-1091  
nyserda.ny.gov | info@nyserda.ny.gov

**Buffalo**  
726 Exchange Street  
Suite 821  
Buffalo, NY  
14210-1484  
(P) 716-842-1522  
(F) 716-842-0156

**New York City**  
1359 Broadway  
19th Floor  
New York, NY  
10018-7842  
(P) 212-971-5342  
(F) 518-862-1091

**West Valley Site  
Management Program**  
9030-B Route 219  
West Valley, NY  
14171-9500  
(P) 716-942-9960  
(F) 716-942-9961

ends up. The State of New York offers the following specific comments for consideration in the formation of the final guidance document:

- (1) With regard to onsite disposal, and specifically for NRC regulated fuel cycle facilities in Agreement States, more clarity and detail is needed in the final guidance document. The final guidance should acknowledge that in the event of an NRC license termination of a fuel cycle facility in an Agreement State, radiological regulatory authority over the site reverts to the Agreement State upon license termination. Further, concurrence of final conditions for the site should be received from the Agreement State regulatory program to avert any circumstances of future restrictions on site development by the Agreement State. For example, New York and the Army Corps of Engineers did not agree to final unrestricted release criteria for certain FUSRAP facilities in New York State, and New York placed restrictions on future site development for facilities that the ACOE had released for unrestricted use; better intergovernmental coordination should be encouraged and ensured via specific language in the final guidance document.
- (2) The Draft Guidance breaks with past precedent and is not consistent with our understanding of Agreement State roles. In the past, the NRC deferred to the New York Agreement State program for alternative onsite disposals at the Ginna Nuclear Power Plant because the site will eventually fall under Agreement State authority following termination of the NRC license. Here the NRC appears to retain that responsibility for themselves. The rationale for this change has not been explained, and New York would submit that no such change to Agreement State roles is appropriate under law and relevant State agreements.
- (3) Policy and decisions controlling the allowance of trace contamination of scrap material into the recycling waste stream should come from a clear and unambiguous national policy and should be made by a single federal entity. The Draft Guidance states that the applicable regulatory standard for allowing alternative disposal by recycling is 100 mrem/yr, even though it states that NRC generally only allows “a few millirem” for these approvals. The 100 mrem/yr public dose standard applies to facilities or activities that are controlled through a license, and takes into account the benefit of the regulated activity to society balanced against the 100 mrem/yr standard. In this case, allowing radiologically contaminated material to be put into the recycling materials stream would not fall under that risk/benefit structure, and 100 mrem/yr is not an applicable standard. Yet no alternative dose standard has been proposed in its place. A clear and unambiguous standard, vetted through an open and inclusive public process, needs to be in place before allowing any additional trace contaminated material to be recycled. Leaving it open to the interpretation of each Agreement State will result in confusion in the recycling industry and reluctance on the part of many States to allow any such material into the recycling

materials stream. The lack of a clear regulatory standard would also leave the States open to being second-guessed by the NRC during the Integrated Materials Performance Evaluation Program (IMPEP) review process.

Further, the Draft Guidance states that the NRC does not generally allow recycling and reuse into consumer products. However, in the Draft Guidance the NRC does not provide a way to ensure that recycled materials are not being diverted into consumer products once introduced into the recycling materials supply stream. Without assurance that this can be prevented, New York cannot support allowing introduction of trace contamination into the recycling product stream.

- (4) Finally, in Section 11 on coordination, the Draft Guidance states that a 20.2002 approval does not override a disposal facilities RCRA permit. This discussion should be expanded to acknowledge that a 20.2002 approval does not override other State regulations that may prohibit such disposals, nor a disposal facility's right to refuse disposal of any waste, even if acceptable to the pertinent regulators.

Thank you for the opportunity to submit these comments.

Sincerely,

*Alyse Peterson*

Alyse Peterson  
State Liaison Officer Designee