

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 16, 2017

Secretary, U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff
Docket ID NRC-2011- 0012

Re: TCEQ Comments on Nuclear Regulatory Commission "Draft Regulatory Analysis for Final Rule: Low-Level Radioactive Waste Disposal"

Dear Secretary:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to respond to the Nuclear Regulatory Commission's (NRC) announcement of a public comment period for the Draft Regulatory Analysis related to proposed revisions to 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste".

TCEQ comments were prepared in response to seven questions the NRC raised in the Federal Register Notice FR DOC # 2017-22459 dated October 17, 2017 that address the NRC's approach for seeking specific cost and benefit information to better inform the updated draft regulatory analysis. The draft regulatory analysis supports the proposed rulemaking to implement revisions to 10 CFR Part 61.

If there are any questions concerning the TCEQ's comments, please contact Mr. Charles Maguire, Division Director, Office of Waste at 512-239-5308 or Charles.Maguire@tceq.texas.gov. We look forward to working with NRC throughout this process.

Sincerely,

A handwritten signature in black ink, appearing to read "R A Hyde".

Richard A. Hyde, P.E.
Executive Director

Texas Commission on Environmental Quality Comments on the Nuclear Regulatory Commission Draft Regulatory Analysis for Final Rule: Low-Level Radioactive Waste Disposal

FR DOC # 2017-22459/ Docket ID NRC-2011- 0012

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is 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.

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

Response: Appropriate alternatives for the regulatory action are being considered.

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

Response: Yes. NRC should consider the actual disposal intentions of the Department of Energy (DOE) since they maintain the largest stockpile of depleted uranium (DU). The amount of DU actually destined for disposal at the three sites identified in the DOE's Supplemental Environmental Impact Statement (SEIS) for disposition of uranium oxide conversion product may have a significant economic impact. The DOE has not as yet completed the SEIS for disposal of DU and based on the alternative(s) chosen will determine the level of analysis needed and subsequent economic impacts to the three identified sites and their regulatory programs. It appears any significant intentions to dispose are being reevaluated and may result in a no-action alternative for disposition of converted DU.

Additionally, the NRC should consider the timing of conversion for the entire stockpile of DU which may be well beyond the operating life of the currently licensed disposal options. In conducting a performance assessment it may be conservative to assume disposal of the entire DU inventory, however, due to future disposal uncertainty it may not be a realistic assumption for determining economic impacts.

Once the SEIS is finalized both the NRC and states will be better informed for determining more accurately economic impacts, if any.

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

Response: See response to Question 2 above.

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?

Response: For Texas the cost of a compliance period of 10,000 years is substantially the same as cost for 1,000. The unintended consequence of a shorter compliance period may be a problem with maintaining public confidence. Texas remains convinced it needs a compliance period that aligns with peak dose or an analysis for a minimum of 1,000 years which is required in current Texas rules (30 Texas Administrative Code 336.709(1)). That could just as easily be peak dose or 10,000 years. As long as NRC treats the compliance period as a minimum criteria and allows more stringent agreement state considerations it does not create a concern for Texas. The public may want to understand better how a 10,000 year compliance period was deemed protective of dose considerations and the new NRC staff direction for a compliance period of 1,000 years is acceptable.

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?

Response: Currently operating disposal sites with limited quantities of DU already that are not expecting further disposal shipments should provide some updated information on the environmental and public health impacts of what is currently disposed. Perhaps some narrative available to the public would be helpful. This approach will be much less of a financial burden than requiring extensive costly analyses for determining long-term performance.

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?

Response: That is a reasonable assumption. However, as noted in response to Question 2 above there is a degree of uncertainty as to how the DOE will proceed with conversion and disposal of its current inventory of DU.

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?

Response: Ultimately waste generators and processors will bear the costs of sophisticated modeling needed to appropriately communicate potential environmental and public health impacts. It is not yet determined who will incur the cost directly and that may vary across the identified SEIS sites, but most likely, once incurred, will fall to the generators and processors.