



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

March 9, 2016

Mr. Charles W. Maguire, Division Director  
Radioactive Materials Division  
Office of Waste  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

SUBJECT: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY'S LETTER ON  
AUTHORITY AND JURISDICTION REGARDING GREATER-THAN-CLASS C  
TYPE WASTE STREAMS

Dear Mr. Maguire:

I am responding to your January 30, 2015, letter requesting clarification of the State of Texas's jurisdiction to license the disposal of Greater-than-Class C (GTCC), GTCC-like (i.e., U.S. Department of Energy generated or owned low-level radioactive waste (LLRW) that may also contain transuranic (TRU) wastes with characteristics similar to GTCC), and TRU waste.

The U.S. Nuclear Regulatory Commission (NRC) has reviewed this matter and has provided direction to the NRC staff in Staff Requirements Memorandum (SRM)-SECY-15-0094 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15356A623), which is discussed below. The definition of LLRW currently found in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 61 excludes TRU waste. Accordingly, waste streams with concentrations of TRU radionuclides greater than 100 nanocuries per gram cannot be disposed of in a Part 61 disposal facility at this time.<sup>1</sup> However, in accordance with Commission direction in SRM-SECY-15-0094, staff will consider addressing transuranic waste in an amendment to § 61.2.

Because 10 CFR Part 61 does not contain general criteria for disposal of GTCC waste and because TRU waste is currently excluded from the definition of LLRW in Part 61, the NRC will take additional steps to inform a generic decision regarding disposal of GTCC and TRU wastes before disposal activities take place. In SRM-SECY-15-0094, the Commission instructed the NRC staff to prepare a regulatory basis for the disposal of GTCC waste. A regulatory basis is an analysis that addresses why a current regulation or policy needs to be changed and proposes different approaches to resolve any outstanding issues. The regulatory basis for a possible rulemaking to address the disposal requirements for GTCC waste would analyze whether, in accordance with section 274c.(4) of the Atomic Energy Act, disposal of GTCC waste presents a hazard such that the NRC should retain authority over its disposal, and will inform the NRC's final determination regarding Texas Commission on Environmental Quality's (TCEQ's) jurisdictional questions. As directed by the Commission, the regulatory basis will be completed within six months of the completion of the ongoing Part 61 rulemaking. The staff plans to conduct a public workshop during the development of the regulatory basis to engage

---

<sup>1</sup> Under 10 CFR § 61.55(a)(3)(ii) TRU waste streams with concentrations under 100 nanocuries per gram can be managed as LLRW.

interested stakeholders. The NRC will also conduct a public workshop with TCEQ staff, and we look forward to receiving your valuable comments on the regulatory basis.

If the NRC staff concludes, as a result of its analysis, that some or all GTCC waste is potentially suitable for a 10 CFR Part 61 disposal facility, the staff will proceed with the development of a proposed rule to include disposal criteria for licensing the disposal of such waste under 10 CFR Part 61.

As discussed in SECY-15-0094, 10 CFR § 61.55(a)(2)(iv) provides a mechanism by which GTCC waste may be disposed of in a LLRW facility licensed pursuant to 10 CFR Part 61, subject to Commission approval of the disposal. The case-by-case review contemplated in 10 CFR § 61.55(a)(2)(iv) is available to parties who seek to dispose of GTCC waste in the near term.

Should you have any questions or comments concerning this response, please contact Melanie Wong at (301) 415-2432.

Sincerely,

***/RA J. Munday for/***

Scott W. Moore, Acting Director  
Office of Nuclear Material Safety  
and Safeguards

cc: Chairman Burns  
Commissioner Svinicki  
Commissioner Ostendorff  
Commissioner Baran  
SECY  
OGC  
EDO

C. Maguire

- 2 -

interested stakeholders. The NRC will also conduct a public workshop with TCEQ staff, and we look forward to receiving your valuable comments on the regulatory basis.

If the NRC staff concludes, as a result of its analysis, that some or all GTCC waste is potentially suitable for a 10 CFR Part 61 disposal facility, the staff will proceed with the development of a proposed rule to include disposal criteria for licensing the disposal of such waste under 10 CFR Part 61.

As discussed in SECY-15-0094, 10 CFR § 61.55(a)(2)(iv) provides a mechanism by which GTCC waste may be disposed of in a LLRW facility licensed pursuant to 10 CFR Part 61, subject to Commission approval of the disposal. The case-by-case review contemplated in 10 CFR § 61.55(a)(2)(iv) is available to parties who seek to dispose of GTCC waste in the near term.

Should you have any questions or comments concerning this response, please contact Melanie Wong at (301) 415-2432.

Sincerely,

***/RA J. Munday for/***

Scott W. Moore, Acting Director  
Office of Nuclear Material Safety  
and Safeguards

cc: Chairman Burns  
Commissioner Svinicki  
Commissioner Ostendorff  
Commissioner Baran  
SECY  
OGC  
EDO