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Annette L. Vietti-Cook  
Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

7/11/2012

77FR #0817

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**Subject: Revision to 10 CFR Part 61**

Dear Ms. Vietti-Cook:

EnergySolutions has been participating in the ongoing rulemaking to revise 10 CFR 61, *Licensing Requirements for Land Disposal of Radioactive Waste*, since the U.S. Nuclear Regulatory Commission initiated the rulemaking process in *Staff Requirements – SECY-08-0147 – Response to Commission Order CLI-05-20 Regarding Depleted Uranium* (the DU SRM). As you are well aware, that process has evolved into one focused not just on depleted uranium but on additional waste streams as well as changes to Part 61 that are not driven by any specific waste stream. Despite these evolutions, one aspect of the ongoing process has not changed – the emphasis on the importance of a site-specific analysis as the optimal way to assess the safety of the disposal of low-level radioactive waste (LLW).

In the DU SRM, The Commission directed staff to initiate a rulemaking that included a requirement to conduct "...a site-specific analysis for the disposal of large quantities of depleted uranium..." The rulemaking was later expanded to include the disposal of blended waste and in the SRM issued in response to SECY-10-0043, the Commission once again directed staff to include "...a clear requirement for a site specific analysis to ensure that blended waste is disposed of safely."

Most recently, in *Staff Requirements – COMWDM-11-0002/COMGEA-11-0002 – Revision to 10 CFR Part 61*, issued January 19, 2012, the Commission provided further direction regarding the ongoing rulemaking. This most recent direction authorized the expansion of the rulemaking and identified four specific areas on which staff should seek public input. One of these would allow a disposal site "...to establish site-specific waste acceptance criteria based on the results of the site's performance assessment and intruder assessment." The Commission noted in the SRM that its direction was intended "...to bring a clearer risk-informed approach to Part 61."

What has become increasingly clear during this rulemaking process is that the site-specific assessment is key not only to addressing the issues associated with the disposal of previously unanalyzed waste streams, but that it also is fundamental to risk-informing Part 61. We would argue that this requirement is so fundamental to that objective that once in place, there is little if anything more that could be done to improve Part 61 from a risk perspective. The Commission noted as much in the last SRM when it observed: "Such revisions may obviate the need for a second protracted rulemaking."

Furthermore, it could be argued that additional changes to Part 61 would be not only unhelpful, but even counterproductive. Unhelpful because it would not be possible to improve Tables 1 and

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2 in 10 CFR 61.55 to the point where they would provide a superior, or even equivalent, basis for the safe disposal of LLW when compared with a site-specific assessment. Any improvements to the tables would still rely on an analysis of generic waste streams and generic sites, which would be inherently inferior to a site-specific approach. In addition, they would continue to be concentration-based, thus forgoing the evaluation of total site inventory, as would be the case with a site-specific analysis. Counterproductive because LLW generators, disposal site operators, Agreement State regulators, and other interested stakeholders would be left at the end of this long and challenging rulemaking merely waiting to see how the result would be changed by the next rulemaking. This flies directly in the face of one of the Commission's *Principles of Good Regulation*, Reliability:

Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition.

Therefore, we ask the Commission to explicitly clarify its outstanding direction to the staff regarding the need for additional Part 61 rulemakings. This is timely because in the July 19, 2012 public workshop, NRC staff stated their intention to pursue additional, separate rulemakings for the classification of depleted uranium and a wholesale revision of Part 61 along one of the (as yet undetermined) approaches in SECY-10-0165, *Staff's Approach to Comprehensive Revision to 10 CFR Part 61*. This is fully understandable – after all, they are doing nothing more than responding to Commission direction – but unnecessary.

We respectfully request that the Commission withdraw direction contained in the SRM-SECY-08-0147 directing staff to consider additional rulemakings. As long as the current rulemaking adopts the provisions outlined in the January 19, 2012 SRM to risk-inform Part 61, it should be the only rulemaking related to Part 61.

We appreciate the Commission's willingness to entertain public comment. Questions regarding these comments may be directed to me at [temagette@energysolutions.com](mailto:temagette@energysolutions.com) or (240) 565-6148.

Sincerely,



Thomas E. Magette, P.E.  
Senior Vice President  
Nuclear Regulatory Strategy

Cc: Chairman Allison M. Macfarlane  
Commissioner Kristine L. Svinicki  
Commissioner George Apostolakis  
Commissioner William D. Magwood, IV  
Commissioner William C. Ostendorff  
William Borchardt, Executive Director for Operations  
Mark Satorius, Office Director FSME  
Larry Camper, Division Director WMEP

**Wright, Darlene**

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**From:** Thomas Magette [TEMAGETTE@energysolutions.com]  
**Sent:** Thursday, August 02, 2012 3:33 PM  
**To:** CHAIRMAN Resource  
**Cc:** Imboden, Andy  
**Subject:** Introduction and Comment Letter re Part 61  
**Attachments:** EnergySolutions Part 61 Letter to Commission - FINAL 080212.pdf

Dear Chairman Macfarlane:

Attached please find a letter that EnergySolutions is transmitting today to each NRC Commissioner regarding the ongoing rulemaking regarding low level radioactive waste. This letter is in addition to the comments provided to staff in response to the request for comment published in the *Federal Register*.

EnergySolutions holds several NRC and Agreement State licenses. We provide a variety of services to the nuclear industry, both commercial and government, in decommissioning, waste packaging, processing and transportation, and LLW disposal. As operators of two of the nation's LLW disposal sites, we are keenly interested in the ongoing proceeding to revise Part 61.

My congratulations to you on your new position. I look forward to meeting you and discussing our operations in more detail.

Sincerely,

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