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General Comment

See attached file(s)

Attachments

Cindy Bladey-Part61final

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July 23, 2015

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Washington, DC 20555-0001

RE: Docket ID NRC-2015-0003

The Board of the Conference of Radiation Control Program Directors (CRCPD) appreciates the opportunity to comment on the Nuclear Regulatory Commission's (NRC's) proposed changes to 10 CFR 61 as published on March 28, 2015. The Board's response has taken into consideration sited and non-sited state opinions.

1. The Board highly recommends Part 61 be left "as is" as much as possible. Updating existing requirements in these sections is a good practice. Since half of the existing sites do not plan on accepting significant quantities of the new long-lived alpha emitting radionuclides, the new requirements should be inserted into at least a new section (e.g., §61.60).

2. The Board objects to redoing the site's performance assessment unless that site opts to take significant quantities of long-lived alpha emitters (e.g., DU). If we read §61.13(e) correctly, the Performance Assessment (PA) is only needed if a site is **going to take** long-lived alpha emitters.

3. The Board concurs with the new requirement to redo a site's PA within 5 years of closure. This allows assumptions made tens of years earlier to be reviewed and perhaps data updated. Unless absolutely needed, no new additional sampling should be done; only updating:

    a. the inventory (adjust projected quantities),
    b. equation values such as k_d,

4. The Board concurs that Defense-in-Depth information (e.g., several independent redundant barriers) should be available in pre-operational documents for each site. For current sites, retrofitting may be extremely difficult if the site is dependent on only one or two robust barrier(s).

5. The revised regulations introduce a new term called the Safety Case. Safety Cases (SC) are, in their simplest terms, a collection of arguments and evidence showing a facility can be sited, designed, constructed, commissioned, operated and shutdown/closed in a safe manner. A key component of the safety case is the analytical safety assessment. The NRC equates the SC's to a PA plus Defense-in-Depth. The exact form of a SC depends on the laws and regulations at a given site. Between radioactive materials licensing and a site environmental review (e.g., NEPA or state equivalent laws), mostly likely the critical components of a SC will be addressed. Is this consistent with the NRC's Safety Case expectation?

6. The Board supports a sited state's ability through regulatory/licensing action to develop site-specific waste classification levels (e.g., similar to 10 CFR 61.55 Tables). Site specific values will provide flexibility not currently in the regulations. The wording in the current proposed rule seems to allow the site operator to decide if other than 10 CFR 61.55 tables will be used. The rule needs to be clearly worded that the site regulator decides if site-specific values will be used.

7. Impacts of regulation changes on the development of new sites are unknown. The NR C in its Regulatory Basis for Proposed Revisions to Low-Level Waste Disposal Facilities (10 CFR Part 61) in part states-PA will be based largely on inference, development of models, and data acquisition to demonstrate 10 CFR Part 61 PA's are met.

   We understand the nature of the uncertainty associated with near surface disposal of Low Level Radioactive Waste (LLRW) and the need for flexibility in a performance based regulatory approach. However, because the proposed rule is ambiguous in in some parts it leaves open the opportunity for the following unintended consequences:

   - New proposed sites that want to dispose of alpha emitters may walk away from the siting process due to the risk associated with uncertainty within the regulation.
   - Varying interpretation of inference could create regulatory mission creep and a regulatory process that becomes too burdensome.
   - Creation of a complex patchwork of regulations that don't allow for a single standard of LLRW packaging.

   The unintended consequences can be minimized in the new proposed rule by adding context to its framework while at the same providing flexibility for existing LLRW sites.

8. The Board is concerned about the compatibility of some sections of the proposed rule. Several new sections are proposed Compatibility Level B. The Board fails to see what significant transboundary issues would arise after already allowing sites to develop site-specific waste acceptance criteria. The definitions of the Compliance Period (CP) and Protective Assurance Periods (PAP) in §61.2 should be more flexible to support individual state's needs. For example, with the idea of the total CP + PAP timeframe remaining 10,000 years and the CP not being less than 1,000 years, the CP could be 2,000 years and PAP 8,000 years. In this case a longer CP is more conservative (i.e., public dose limit is extended). The 2013-001 SRM spoke to reasonable uncertainty and the comfort level of the decision makers. This added flexibility will help the states where their decision makers feel comfortable (e.g., risk informed) accepting additional uncertainty.

   Since the following sections are primarily dose related, the Board supports the proposed Compatibility Levels for:

   a. §61.41(a), (b), and (c)
   b. §61.42(a), (b), and (c)

9. A regulatory back-fit analysis, although not required, should have been performed for this revision.

10. Further details should be provided for review and comment on how the financial burden for implementation of this revision placed on sited Agreement State programs was derived.

11. Predictions of site stability for 10,000 years (required in §61.44) are subjective and filled with uncertainty. The Board agrees with NRC staff in that site stability is critical to achieving the performance objectives of §61.41 and §61.42. What is not readily apparent is why the site stability performance objective (§61.44) needs to stand alone in the NRC's world of performance based regulations. Due to concern over uncertainty, the NRC in the past several years, has reduced its timeframe for its public dose limit (0.25 mSv annually) compliance to 1000 years. Isn't the site stability performance objective subject to the same uncertainty?

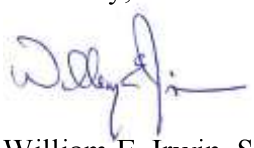
12. The assigned dose stated in §61.41(b) and §61.42(b) for the PAP is not clear. As stated in these paragraphs, the annual dose shall be below 5 mSv or a level that is supported as reasonably achievable …. Is the 5 mSv an upper limit or are **higher levels** allowed if supported as reasonably achievable based on technological and economic considerations?

13. The Board understands the Guidance for Conducting Technical Analyses for 10 CFR Part 61 (NUREG-2175) supports the current proposed rulemaking. The CRCPD appreciates the ability to review both the proposed rule and corresponding guidance at the same time. The Board suggests a new draft guidance document be released for additional review after the Commission approves Part 61.

14. NRC's re-interpretation of §61.1(a) is a concern for existing sites. While interpreted as grandfathering in the current version of 10 CFR 61, NRC staff have altered their view of §61.1(a). The current interpretation recognizes that new requirements introduced after a facility is licensed and operating under previous requirements would not necessarily be binding on either Agreement States or operators that committed to, and were licensed under, specific site conditions and licensing requirements in good faith. Existing sites may need to depend on current interpretation in the near term. Little explanation has been given for this change. An explanation is requested.

If you have any questions regarding these comments, please feel free to contact Earl Fordham at 509-946-0234 or earl.fordham@doh.wa.gov)

Sincerely,



William E. Irwin, Sc.D., CHP
Chairperson

cc: Board of Directors