



CHAIRMAN

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

June 5, 2019

The Honorable Greg Abbott
Governor of Texas
Austin, TX 78711

Dear Governor Abbott:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of April 26, 2019,¹ in which you expressed concerns about the U.S. Department of Energy and NRC activities that could allow for disposal of more highly radioactive waste in Texas without State approval. Texas, as an Agreement State, is a valued regulatory partner to the NRC. The NRC staff frequently interacts with the Texas Department of State Health Services and the Texas Commission on Environmental Quality (TCEQ) on regulatory matters and benefits from those interactions.

The NRC received a January 30, 2015, letter from TCEQ² seeking jurisdictional clarification regarding disposal of Greater-Than-Class C (GTCC) waste. Subsequently, the Commission directed the NRC staff to prepare a regulatory basis that would inform the Commission's answer to TCEQ's questions regarding GTCC disposal.³ The NRC staff informed TCEQ of that Commission direction in a March 9, 2016, letter.⁴ The draft regulatory basis, which will be issued for public comment later this year, will include the staff's analysis of whether GTCC waste can be disposed through means other than deep geological disposal, including near-surface disposal, and whether the disposal of GTCC waste presents a hazard such that the NRC should retain authority over its disposal. The draft regulatory basis will also analyze whether, and under what conditions, near-surface GTCC disposal can be authorized on a generic basis without regard to any particular disposal location. The development of the regulatory basis is a public process, and the State of Texas and other interested stakeholders will have opportunities to comment on the draft regulatory basis before it is finalized. The NRC staff plans to hold a meeting in Texas later this year to receive comments on the regulatory basis. The NRC staff will carefully consider all comments received before finalizing the regulatory basis.

¹ The letter can be found in NRC's Agencywide Documents Access and Management System (ADAMS), ADAMS Accession No. ML19121A544.

² The letter can be found in ADAMS, ADAMS Accession No. ML15034A174.

³ "Staff Requirements – SECY-15-0094 – Historical and Current Issues Related to Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste" can be found in ADAMS, ADAMS Accession No. ML15356A623.

⁴ The letter can be found in ADAMS, ADAMS Accession No. ML15343A291.

Once the regulatory basis is finalized, the NRC staff will develop a recommendation for the Commission regarding the need to proceed to rulemaking to modify Part 61 of the *Code of Federal Regulations*, "Licensing Requirements for Land Disposal of Radioactive Waste." If the Commission directs the staff to proceed with rulemaking, the rulemaking process would provide additional opportunities for participation by the State of Texas and other stakeholders, including a formal comment period, before promulgation of any changes to the existing regulations.

I appreciate the opportunity to describe the NRC's activities related to GTCC waste disposal and we look forward to continued engagement with the State of Texas on this and other regulatory matters.

If you have questions or need more information, please contact me or have your staff contact John Lubinski, Director of the Office of Nuclear Material Safety and Safeguards, at (301) 415-0595.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kristine L. Svinicki', with a stylized, flowing script.

Kristine L. Svinicki

cc: The Honorable Rick Perry
Secretary
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585