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New York State Energy Research and Development Authority

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U.S. Nuclear Regulatory Commission
Office of the Secretary
ATTN: Rulemakings and Adjudications Staff
Washington, DC 20555

Subject: "Integrated Low-Level Radioactive Waste Disposal" [NRC-2011-0012, NRC-2015-0003, and NRC-2017-0081]

To all concerned:

The State of New York appreciates the opportunity to comment on the U.S. Nuclear Regulatory Commission's (NRC's) proposed rule "Integrated Low-Level Radioactive Waste Disposal" published in the Federal Register on July 1, 2026. The proposed rule updates the requirements for land disposal of low-level radioactive waste and establishes a non-repository disposal pathway for Greater-Than-Class C (GTCC) radioactive waste.

New York's Interest in the Proposed Rule

New York State has a direct and substantial interest in this action. New York hosts four operating civilian commercial nuclear power reactors at three sites that provide approximately 20 percent of the State's electricity. The State is also home to the Western New York Nuclear Service Center in West Valley, the only privately-operated spent fuel reprocessing plant in the United States, which operated from 1966 to 1972. The approximate 40-year cleanup of the site has proceeded under the West Valley Demonstration Project Act of 1980 and remains a multi-billion-dollar federal and State undertaking. The site is owned by the State of New York through the New York State Energy Research and Development Authority (NYSERDA).

Comments on the Proposed Rule

New York supports key provisions of the proposed rule. For example, including transuranic waste in the definition of low-level radioactive waste (LLW) allows disposal in commercial facilities if the waste meets the class requirements. In addition, NYSERDA appreciates that the proposed rule would allow for near-surface disposal of GTCC and specialized land disposal facilities for GTCC with a 10,000-year compliance period and an annual dose limit of 25 mrem for the general population and 500 mrem for an inadvertent

intruder. Near-surface disposal would be at least 5 meters deep and specialized land disposal facilities would be at least 30 meters deep. This should enable the disposal of GTCC waste from commercial facilities and generators in New York in the nuclear power, industrial, medical, and academic sectors. These options also increase flexibility for residual and secondary waste streams that may arise during Phase 2 decommissioning at the West Valley Demonstration Project.

At the same time, NYSERDA continues to maintain, as it has for many years, that the Waste Isolation Pilot Plant (WIPP) remains the most appropriate and preferred disposition facility for the approximately 30,000 cubic feet of transuranic waste currently stored at West Valley. In congressional testimony on May 18, 2018, NYSERDA General Counsel Noah C. Shaw stated:

> It is NYSERDA's position that the high-level radioactive waste (HLW) and transuranic waste (TRU) left at the site as a result of the reprocessing operation are 'from atomic energy defense activities' as defined in the Nuclear Waste Policy Act (NWPA)—i.e., they are 'defense waste'—and are therefore eligible for disposal in the same manner, and in the same facilities, as other U.S. Department of Energy (DOE) defense HLW and TRU.[1]

The testimony detailed the historical record: approximately 60 percent of the spent nuclear fuel reprocessed by Nuclear Fuel Services at West Valley originated from the Hanford N-Reactor under Atomic Energy Commission contracts; nearly all of the recovered plutonium and uranium was returned to federal defense facilities; and NFS performed additional defense-related work under U.S. Air Force contracts. These facts, NYSERDA has consistently argued, place the resulting TRU within the statutory definition of waste from atomic energy defense activities.

Subsequent public statements and briefings by NYSERDA (including to the West Valley Citizen Task Force and in National Governors Association materials) have reiterated the same position.[2] In 2021, the Government Accountability Office confirmed both the inventory figure and the continuing unresolved disagreement between DOE's "commercial" designation and New York's defense-origin analysis.[3]

While the proposed Part 61 revisions usefully provide alternative disposal options should legislative or administrative barriers to WIPP persist, those alternatives should not become a substitute for DOE issuing a defense-waste determination for West Valley TRU.

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[1] https://www.congress.gov/115/meeting/house/108315/witnesses/HHRG-115-IF18-Wstate-ShawN-20180518.pdf

[2] *Cleaning up America's nuclear weapons complex 2023 update for governors*. (2023). and *Western New York Nuclear Service Center Development & early history*. (2024). https://westvalleyctf.org/wp-content/uploads/2024/06/Western-New-York-Nuclear-Service-Center-Development-Operations-and-Shut-Down-R3.0.pdf

[3] *Nuclear Waste: Congressional Action Needed to Clarify a Disposal Option at West Valley Site in New York*. U.S. Government Accountability Office (GAO-21-115). January 2021.

Reliance on commercial near-surface or specialized land disposal for material that meets the statutory definition of defense TRU would undermine the policy framework Congress established for defense-generated transuranic waste.

NYSERDA therefore recommends that the final rule and accompanying guidance clarify that nothing in the rule alters or diminishes the separate statutory and policy framework governing disposal of defense TRU at WIPP under the Waste Isolation Pilot Plant Land Withdrawal Act and the Nuclear Waste Policy Act. The existence of commercial pathways under Part 61 must not be interpreted as a suggestion that West Valley TRU is ineligible for WIPP or that the defense-origin question has been resolved. This balanced approach preserves the new flexibility created by the proposed rule while upholding the principle, consistently advanced by NYSERDA, that wastes generated, in significant part, by atomic energy defense activities belong in the dedicated national repository designed for that purpose.

State Engagement in Licensing Activities

10 CFR 61 subpart F does not appropriately enable Agreement States to consider and provide input in NRC licensing of Greater-Than-Class-C (GTCC) facilities. Agreement States have the technical expertise and capability for siting, licensing, and permitting of Class A, B, and C Low Level Radioactive Waste (LLRW) facilities and should remain active participants in license review of GTCC facilities located within their states. It is recommended that the final rule automatically include Agreement States in the process for siting and licensing a GTCC specialized land disposal facility, without the need to request participation, instead of relying on 10 CFR 61 Subpart F, which is currently only applicable to non-Agreement States' input in licensing LLRW disposal.

Non-Agreement States, which do not have licensing and permitting authority and, therefore, do not have the expertise to review technical analyses, can have a Class A, B, or C near surface disposal facility sited and licensed in their state by the NRC. Subpart F allows these states to be participants in the current process. The proposed 10 CFR 61 regulations should include specific language that would include an automatic participation process for Agreement States in NRC's licensing process of any GTCC LLRW facility in their respective state. This should be done so that Agreement States' substantive comments will be incorporated into an NRC license review ensuring consistency with Agreement States' licensing and permitting approvals.

Conclusion

New York appreciates NRC's important effort to establish a regulatory framework for non-repository disposal of commercial GTCC. Our recommended clarification will ensure

that this new pathway is available for commercial waste streams while recognizing that defense TRU, including West Valley TRU, should be disposed of at WIPP.

Thank you for the opportunity to comment. If you have any questions or concerns, please contact me.

Sincerely,

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